

EXHIBIT B50

Patrick Downey

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____)	
IN RE: JOHNSON & JOHNSON)	MDL NO.
TALCUM POWDER PRODUCTS)	16-2738 (FLW) (LHG)
MARKETING, SALES PRACTICES)	
AND PRODUCTS LIABILITY)	
LITIGATION)	
)	
THIS DOCUMENT RELATES TO ALL)	
CASES)	
_____)	

PURSUANT TO NOTICE, the 30(b)(6) deposition of IMERYS TALC AMERICA, INC., through the testimony of PATRICK DOWNEY, was taken on behalf of the Plaintiffs at Gordon & Rees, 555 Seventeenth Street, Suite 3400, Denver, Colorado, on August 7, 2018, commencing at 9:36 a.m., before Melanie L. Giamarco, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within Colorado.

Patrick Downey

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2 For the Plaintiffs' Steering Committee:</p> <p>3 ASHCRAFT & GEREL, LLP</p> <p>4 BY: MICHELLE A. PARFITT, ESQ.</p> <p>5 4900 Seminary Road, Suite 650</p> <p>6 Alexandria, Virginia 22311</p> <p>7 BEASLEY, ALLEN, CROW, METHVIN,</p> <p>8 PORTIS & MILES, P.C.</p> <p>9 BY: P. LEIGH O'DELL, ESQ.</p> <p>10 JENNIFER K. EMMEL, ESQ.</p> <p>11 218 Commerce Street</p> <p>12 Post Office Box 4160</p> <p>13 Montgomery, Alabama 36103</p> <p>14</p> <p>15 MOTLEY RICE, LLC</p> <p>16 BY: CARMEN S. SCOTT, ESQ.</p> <p>17 28 Bridgeside Boulevard</p> <p>18 Mt. Pleasant, California 29464</p> <p>19 For Johnson & Johnson:</p> <p>20 BY: SHASHA Y. ZOU, ESQ.</p> <p>21 ORRICK, HERRINGTON & SUTCLIFFE, LLP</p> <p>22 51 West 52nd Street</p> <p>23 New York, New York 10019-6142</p> <p>24 For Imerys Talc America, Inc.:</p> <p>25 ALSTON & BIRD, LLP</p> <p>BY: SARAH O'DONOHUE, ESQ.</p> <p>One Atlantic Center</p> <p>1201 West Peachtree Street</p> <p>Atlanta, Georgia 30309</p> <p>GORDON REES SCULLY MANSUKHANI, LLP</p> <p>BY: KENNETH J. FERGUSON, ESQ.</p> <p>816 Congress Avenue, Suite 1510</p> <p>Austin, Texas 78701</p> <p>SEYFARTH SHAW, LLP</p> <p>BY: THOMAS T. LOCKE, ESQ.</p> <p>975 F Street, N.W.</p> <p>Washington, D.C. 20004</p> <p>SANDBERG, PHOENIX & VON GONTARD, P.C.</p> <p>BY: MARK A. PROST, ESQ.</p> <p>600 Washington Avenue, 15th Floor</p> <p>St. Louis, Missouri 63101</p>	<p>1 INDEX</p> <p>2 EXAMINATION OF PATRICK DOWNEY: PAGE</p> <p>3 August 7, 2018</p> <p>4 By Ms. O'Dell 7</p> <p>5 EXHIBIT DESCRIPTION PAGE</p> <p>6 Exhibit 1 The Plaintiffs' Steering 7</p> <p>7 Committee's Second Amended</p> <p>8 Notice of the 30(b)(6)</p> <p>9 Deposition of Defendant</p> <p>10 Imerys Talk America, Inc.</p> <p>11</p> <p>12 Exhibit 2 E-mail dated 7/31/18 from 7</p> <p>13 Silver to Parfitt, et al.,</p> <p>14 subject: MDL 2738 -</p> <p>15 Amendment to Imerys' 30(b)(6)</p> <p>16 witness designations and CVs</p> <p>17 for witnesses</p> <p>18 Exhibit 3 6/22/18 letter to Tisi from 11</p> <p>19 Silver</p> <p>20 Exhibit 4 CV of Downey 14</p> <p>21</p> <p>22 Exhibit 5 Compilation of handwritten 17</p> <p>23 notes of Downey, 24 pages</p> <p>24 Exhibit 6 Handwritten note "Guangxi #2" 67</p> <p>25 of Downey, 1 page</p> <p>Exhibit 7 Handwritten notes of O'Dell 105</p> <p>taken during examination of</p> <p>Downey, 1 page</p> <p>Exhibit 8 Document prepared by Rio 107</p> <p>20 Tinto Minerals for IMA</p> <p>21 Exhibit 9 Acquisition of Windsor 120</p> <p>22 Minerals, Inc. and Western</p> <p>23 Source, Inc., by Cyprus Mines</p> <p>24 Corporation on January 6,</p> <p>25 1989</p>
Page 3	Page 5
<p>1 (Cont'd)</p> <p>2 APPEARANCES</p> <p>3</p> <p>4 For Imerys Talc America, Inc.:</p> <p>5 COUGHLIN DUFFY, LLP</p> <p>6 BY: MARK K. SILVER, ESQ.</p> <p>7 350 Mount Kemble Avenue</p> <p>8 Post Office Box 1917</p> <p>9 Morristown, New Jersey 07962</p> <p>10 For PharmaTech Industries:</p> <p>11 TUCKER ELLIS, LLP</p> <p>12 BY: TARIQ M. NAEEM, ESQ.</p> <p>13 950 Main Avenue, Suite 1100</p> <p>14 Cleveland, Ohio 44113</p> <p>15</p> <p>16 Also Present:</p> <p>17 Joel Oriat, Videographer</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Cont'd)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 10 Sale of CIM - Stock Purchase 140</p> <p>4 Agreement among Cyprus Mines</p> <p>5 Corporation, Cyprus Minerals</p> <p>6 Company and RTZ America, Inc.</p> <p>7 IMERYS-MDL-AB 0008412 -</p> <p>8 IMERYS-MDL-AB 0009049</p> <p>9</p> <p>10 Exhibit 11 Cyprus Ore Reserve 151</p> <p>11 Evaluation, Preliminary</p> <p>12 Summary</p> <p>13 IMERYS 425354 - IMERYS 425391</p> <p>14 Exhibit 12 3/25/92 interoffice 174</p> <p>15 correspondence to</p> <p>16 Distribution from R.C. Munro,</p> <p>17 subject: Cyprus Ore Reserves</p> <p>18 - Arsenic & Tremolite</p> <p>19 IMERYS219720 - IMERYS219722</p> <p>20</p> <p>21 Exhibit 13 Compilation folder entitled 182</p> <p>22 "Mine Data"</p> <p>23 IMERYS 436951 - IMERYS 436971</p> <p>24</p> <p>25 Exhibit 14 Colorado School of Mines 190</p> <p>Research Institute Geological</p> <p>Audit, Windsor Minerals,</p> <p>12/4/70</p> <p>JNJ 000245002 - JNJ000245148</p> <p>Exhibit 15 Report entitled "Geology and 206</p> <p>Ore Reserves of the</p> <p>Hammondsville Ore Body," by</p> <p>William Gregg, 2/20/78</p> <p>IMERYS 436972 - IMERYS 437097</p> <p>Exhibit 16 Document entitled "Maps and 210</p> <p>Cross Sections to Accompany</p> <p>Report on Geology and Ore</p> <p>Reserves"</p> <p>JNJ000261701 - JNJ000261716</p> <p>Exhibit 17 U.S. Borax Drilling Log Hole 214</p> <p>#92-1, 4/25/92</p> <p>IMERYS 435988 - IMERYS 435990</p>

2 (Pages 2 to 5)

Patrick Downey

Page 6	Page 8
<p>1 (Cont'd)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 18 U.S. Borax Drill Log, Hole 214</p> <p>4 #92-2, 4/27/92</p> <p>5 IMERYYS 435992 - IMERYYS435998</p> <p>6 Exhibit 19 U.S. Borax Drill Log, Hole 215</p> <p>7 #92-3, 4/26/92</p> <p>8 IMERYYS 435996 - IMERYYS 435998</p> <p>9 Exhibit 20 U.S. Borax Drill Log, Hole 215</p> <p>10 #92-4, 4/29/92</p> <p>11 IMERYYS 436000 - IMERYYS 436002</p> <p>12 Exhibit 21 5/21/92 interoffice 218</p> <p>13 correspondence, with</p> <p>14 attachments, to U.S.</p> <p>15 Borax/Los Angeles from Kellie</p> <p>16 and Carpenter, subject: Hamm</p> <p>17 Mine Core Drilling</p> <p>18 IMERYYS 238270 - IMERYYS 238277</p> <p>19 Exhibit 22 Appendix B5, North American 237</p> <p>20 Mines, Northeastern Ore</p> <p>21 Bodies</p> <p>22 IMERYYS 427291 - IMERYYS 427310</p> <p>23</p> <p>24 Exhibit 23 Compilation of documents in 253</p> <p>25 file entitled "Section #1"</p> <p>IMERYYS 427423 - IMERYYS 427427</p>	<p>1 Plaintiffs' Steering Committee on behalf of more</p> <p>2 than 9,000 women who have filed claims who have</p> <p>3 ovarian cancer, either suffering or died of ovarian</p> <p>4 cancer. And I'm here to ask you questions today on</p> <p>5 behalf of Imerys.</p> <p>6 Do you understand that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Let me show you what I've marked</p> <p>9 prior to the deposition as, first, Exhibit 1, which</p> <p>10 is the deposition notice, and Exhibit 2, which is</p> <p>11 an e-mail from counsel for Imerys.</p> <p>12 Have you seen this document before,</p> <p>13 Mr. Downey?</p> <p>14 A. Yes.</p> <p>15 Q. And as I understand it, today you have</p> <p>16 come to provide testimony on the topics listed in</p> <p>17 the notice as amended by the e-mail from counsel, I</p> <p>18 believe, on July 31st, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And those topics include the talc mines,</p> <p>21 the identity of the talc mines that were sources of</p> <p>22 talc for Johnson & Johnson talcum-powder products,</p> <p>23 which was in the notice, Roman numeral I, Topic 2;</p> <p>24 do you see that, sir?</p> <p>25 A. Yes.</p>
Page 7	Page 9
<p>1 PROCEEDINGS</p> <p>2 (Exhibits 1 and 2 were marked for</p> <p>3 identification.)</p> <p>4 VIDEOGRAPHER: We are now on the record. My</p> <p>5 name is Joel Coriat. I am the videographer,</p> <p>6 representing Golkow Litigation Services. The date</p> <p>7 today is August 7, 2018. The time is now 9:36 a.m.</p> <p>8 This video deposition is being held in</p> <p>9 Denver, Colorado, in the matter of</p> <p>10 Johnson & Johnson talcum-powder products Marketing,</p> <p>11 Sales Practices and Products Liability Litigation</p> <p>12 for the U.S. District Court, District of New</p> <p>13 Jersey. The deponent is Pat Downey. Counsel will</p> <p>14 be noted on the stenographic record.</p> <p>15 The court reporter is Melanie Giamarco. She</p> <p>16 will now swear in the witness.</p> <p>17 PATRICK DOWNEY,</p> <p>18 after having been duly sworn, was examined and</p> <p>19 testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MS. O'DELL:</p> <p>22 Q. Good morning, Mr. Downey.</p> <p>23 A. Good morning.</p> <p>24 Q. My name is Leigh O'Dell. We met just a</p> <p>25 few minutes ago. And I'm here on behalf of the</p>	<p>1 Q. Great. You're also here to provide</p> <p>2 testimony for Roman numeral I, subsection 8, which</p> <p>3 is processing of talc by Imerys --</p> <p>4 A. Yes.</p> <p>5 Q. -- correct?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. You're here today as well to, or</p> <p>8 tomorrow -- to talk about subsection Roman</p> <p>9 numeral II, 9, which relates to quality assurance?</p> <p>10 A. Yes.</p> <p>11 Q. And then lastly, you're here to offer</p> <p>12 testimony on behalf of Imerys for the topics Roman</p> <p>13 numeral III, 1, which relates to sampling, and 2,</p> <p>14 which relates to the process or handling of</p> <p>15 samples, correct?</p> <p>16 MR. PROST: And 6.</p> <p>17 MS. O'DELL: Yes. Thanks, Mark.</p> <p>18 Q. (By Ms. O'Dell) And Number 6, protocols</p> <p>19 or restrictions on mining talc for use in</p> <p>20 talcum-powder products?</p> <p>21 A. Yes, those three.</p> <p>22 MR. PROST: And just one small</p> <p>23 clarification, you'll see in the e-mail, with</p> <p>24 respect to section Roman numeral III, 1 and 2,</p> <p>25 there's sentence in there clarifying that Pat is</p>

3 (Pages 6 to 9)

Patrick Downey

<p style="text-align: right;">Page 10</p> <p>1 designated on these topics for any part of the 2 sampling process that occurs prior to the receipt 3 of the samples by the analytical lab in San Jose, 4 California, with Julie Pier remaining designated as 5 to those topics for questions relating to the 6 testing of samples which occurs at the analytical 7 lab at the request of the analytical group. 8 Q. (By Ms. O'Dell) Mr. Downey, Imerys Talc 9 America is the name -- 10 A. Can you speak up a little? I'm hard of 11 hearing. 12 Q. Yeah, sure. 13 Imerys Talc America is the defendant in this 14 litigation. Imerys has had numerous predecessor 15 companies, including Rio Tinto Minerals. 16 Are you aware of that, I'm sure? 17 MR. PROST: I'm going to object to form. I 18 think it's inaccurate saying it's a predecessor 19 company. 20 MS. O'DELL: Okay. 21 Q. (By Ms. O'Dell) Well, let me just ask 22 you today -- 23 MR. PROST: And actually, Leigh, before we 24 go any further, I just wanted to make one more 25 housekeeping item.</p>	<p style="text-align: right;">Page 12</p> <p>1 through this deposition when we're talking about 2 documents that may have arisen during a time 3 period, for example, when the company name was 4 Luzenac or relates to Rio Tinto Minerals. I want 5 us to have an agreement that when I ask you a 6 question about those documents and I refer to 7 "Imerys," you are binding Imerys as a company in 8 relation to those topics. 9 Do we have an agreement? 10 MR. PROST: Object to form. 11 A. I'm not sure I understand quite what you 12 mean by binding those entities. I'm aware of the 13 history of the company, and, you know, I'm aware of 14 Luzenac America and Rio Tinto Minerals, you know, 15 in the context of the historic -- historically 16 related parties, so I'm not sure what you mean by 17 bound. 18 Q. (By Ms. O'Dell) Okay. Well, we'll go 19 through it step by step as we go through the 20 deposition, but at least let's see if we can get 21 this agreement. 22 When I refer to "Imerys," we have an 23 agreement that that encompasses Luzenac and Rio 24 Tinto? 25 A. "Encompasses"? I think I can agree to</p>
<p style="text-align: right;">Page 11</p> <p>1 MS. O'DELL: Oh, sure. 2 MR. PROST: If I could make this as an 3 exhibit. This is a June 22, 2018, letter by 4 Mr. Silver just memorializing the agreement that 5 Imerys made with the Plaintiffs' Steering Committee 6 as to objections to certain definitions in the 7 30(b)(6) notice. And we'll mark this as Exhibit 3 8 Downey. 9 (Exhibit 3 was marked for identification.) 10 MR. PROST: And I'll just say that the 11 objections are definitions number 7, 8, 9, 11 and 12 12. We have a standing objection to those 13 definitions and we won't need to repeat those 14 throughout the deposition as those terms come up. 15 MS. O'DELL: Yeah. The Plaintiffs' Steering 16 Committee is aware of the objection and, obviously, 17 notes them for the record, but disagrees, and so 18 we're not bound by those objections as we ask 19 questions about, for example, the definition of 20 "asbestos" and other things going forward to the 21 deposition today. 22 Q. (By Ms. O'Dell) Mr. Downey, I was 23 asking you about the companies that have been 24 associated or preceded Imerys Talc America. And I 25 want to have an understanding today as we go</p>	<p style="text-align: right;">Page 13</p> <p>1 that. 2 Q. Okay. Fair enough. 3 We're taking your deposition here today for 4 purposes of general causation only. The Court in 5 the MDL -- you may or may not be aware, but I need 6 to say this for the record -- has limited the scope 7 of your deposition as a corporate representative of 8 Imerys to topics that relate to the 9 general-causation aspect of the plaintiffs' case. 10 So we reserve the right to redepose you as an 11 individual or on behalf of the corporation when it 12 comes to the time period where liability 13 depositions are going forward. And that may or may 14 not make sense to you, but I need to say that for 15 the record. 16 A. Okay. 17 Q. Second, I would say on Friday afternoon, 18 very late in the day after 5:00, at least 5 p.m. 19 Central time, we received a production from Imerys 20 that encompassed more than 1,600 documents. About 21 a third or more of those involved the topics that 22 you're providing testimony on. 23 MS. O'DELL: So I said I was going to put 24 this on the record, Counsel, so I'll do it right 25 now.</p>

Patrick Downey

<p style="text-align: right;">Page 14</p> <p>1 Those were made available to us late by an 2 FTP link. It wasn't until Monday morning that we 3 were able to get access to those documents on our 4 review platform. We're working through those, but 5 we reserve the right to have additional time, other 6 than the two days set aside this week to depose 7 Mr. Downey on the documents that were produced to 8 us. 9 MR. SILVER: Your objection's noted. We 10 will -- we don't agree, but we can -- as always, 11 we'll meet and confer and talk about it, if 12 necessary. 13 MS. O'DELL: Fair enough. 14 Q. (By Ms. O'Dell) Mr. Downey, I want to 15 talk to you a bit about your background first. And 16 I'm going to hand to you a copy of a curriculum 17 vitae that was provided to us by your counsel. 18 I've marked it as Exhibit 4. 19 (Exhibit 4 was marked for identification.) 20 MS. O'DELL: Guys, I'm short a copy. I 21 apologize. 22 Q. (By Ms. O'Dell) Mr. Downey, did you 23 prepare this curriculum vitae? 24 A. Yes. 25 Q. And when did you prepare it? Was it</p>	<p style="text-align: right;">Page 16</p> <p>1 China, is it fair to say that you have not been 2 involved in the oversight of the mining operations 3 that have resulted in talc being sold to 4 Johnson & Johnson? 5 A. That's correct. 6 Q. Mr. Downey, in the Notice of Deposition, 7 there is a section called "Instructions." I don't 8 know if you've had an opportunity to take a look at 9 that. It's on page 10 of the notice. Gives some 10 ground rules, if you will, about what I can ask you 11 in regard to your preparation for your testimony 12 here today. 13 You've provided a curriculum vitae. I thank 14 you for that. But I also want to know what you did 15 to prepare for your deposition. And so let me 16 begin by asking when you learned that you would 17 serve as a corporate representative in this 18 context. 19 A. I believe sometime in May or June, I 20 think. 21 Q. Since that time, how many times -- let's 22 say it was the end of May. Let's put it in that 23 context; does that sound fair? 24 A. Fair. 25 Q. Since May, how many times have you met</p>
<p style="text-align: right;">Page 15</p> <p>1 prepared for purposes of this deposition? 2 A. It was updated. I mean, I think I 3 updated it about a year ago, and then I reviewed it 4 when it was provided. 5 Q. And I'm not going to spend a lot of time 6 on this, but I just want to ask you a couple of 7 preliminary questions, and then we'll come back to 8 this. 9 Is it fair to say that during your tenure 10 with Imerys that you have not had any 11 responsibility or managerial responsibility for the 12 operation of Imerys' talc mines in Vermont? 13 A. That's correct. 14 Q. And is it also fair to say that in your 15 tenure as an employee of Imerys, or one of the 16 previous predecessor companies, that you've had no 17 role in supervising or managing the processing 18 plant at West Windsor? 19 A. That's correct. 20 Q. And is it also fair to say that you've 21 not had a supervisory role, managerial role or any 22 input into the operations of the Houston processing 23 plant? 24 A. That's correct. 25 Q. In regard to the mining operations in</p>	<p style="text-align: right;">Page 17</p> <p>1 with counsel to prepare for your testimony today? 2 A. On, I think, four occasions. 3 Q. When was the first time that you met 4 with Imerys' counsel? 5 A. Mid- to late June, I think. 6 Q. And do you have a specific date when you 7 met with counsel? 8 A. Not that I recall, no. 9 Q. Did you make any notes during that 10 meeting? 11 A. I've made some notes. And I believe 12 they've been provided. 13 Q. Counsel did provide a group of 14 handwritten notes to us. I'm going to mark that 15 right now as Exhibit 5. 16 (Exhibit 5 was marked for identification.) 17 Q. (By Ms. O'Dell) Are those the notes 18 that you're referring to? 19 A. Yes. 20 Q. Mr. Downey, are these notes provided in 21 chronological order? Some of them are not dated. 22 I'm just trying to get a sense of when you had 23 certain meetings and certain discussions. 24 A. I'm not sure that they're in 25 chronological order. There are some general notes</p>

5 (Pages 14 to 17)

Patrick Downey

<p style="text-align: right;">Page 18</p> <p>1 that I think are out of order.</p> <p>2 Q. How did these notes come into existence?</p> <p>3 Are these your notes, your handwritten notes?</p> <p>4 A. Yes, they are.</p> <p>5 Q. Were these taken contemporaneously with</p> <p>6 the discussion that you were having? In other</p> <p>7 words, were they rewritten or are these the notes</p> <p>8 you took during particular meetings or calls?</p> <p>9 A. They were contemporaneous.</p> <p>10 Q. The first page of Exhibit 5 appears to</p> <p>11 be -- let me -- why don't you tell me what it is?</p> <p>12 A. It's the -- I made a note in my calendar</p> <p>13 for a call with Miss Pier Julie Pier, another</p> <p>14 witness who's going to be deposed in this matter.</p> <p>15 Q. And the date of this call, according to</p> <p>16 your calendar, is July 27th, 2018?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. How many times had you met with counsel</p> <p>19 prior to having this discussion with Miss Pier --</p> <p>20 is it Peer or Pier?</p> <p>21 A. What you just said, I didn't distinguish</p> <p>22 a difference. It sounded like "Peer" to me.</p> <p>23 Q. All right. It's a little hard to</p> <p>24 understand my southern accent sometimes, too, so</p> <p>25 we'll see.</p>	<p style="text-align: right;">Page 20</p> <p>1 which company.</p> <p>2 Q. And when you say "which company," which</p> <p>3 companies are you referring to? Imerys Talc</p> <p>4 America and what other entity?</p> <p>5 A. Perhaps Imerys Talc Canada.</p> <p>6 Q. And what is -- is it Mr. Herrick?</p> <p>7 A. Marek. M-a-r-e-k.</p> <p>8 Q. And what is -- in terms of Mr. Marek's</p> <p>9 role, you said he's a geologist.</p> <p>10 What's his area of responsibility?</p> <p>11 A. The ore reserves and mine-planning</p> <p>12 aspects of our talc mines.</p> <p>13 Q. For all Imerys talc mines?</p> <p>14 A. I'm not sure how expansive his scope is,</p> <p>15 but generally, North America.</p> <p>16 Q. Does Mr. Marek have any responsibility</p> <p>17 for operations or -- strike that.</p> <p>18 Does Mr. Marek have responsibility that</p> <p>19 relates to the mining operations in China?</p> <p>20 A. No, I don't think so.</p> <p>21 Q. Did he provide you with information</p> <p>22 regarding the mining operations in China?</p> <p>23 A. Not China, no.</p> <p>24 Q. Was anybody else present in person</p> <p>25 physically at the meeting other than those you've</p>
<p style="text-align: right;">Page 19</p> <p>1 But -- okay. Miss Pier, you talked with her</p> <p>2 on July 27th.</p> <p>3 My question is, how many times had you met</p> <p>4 with counsel prior to this discussion with</p> <p>5 Miss Pier?</p> <p>6 A. I'd say at least twice. I don't recall</p> <p>7 the specific dates of the meetings, but Friday,</p> <p>8 July 27th, was only a few weeks ago.</p> <p>9 Q. So you met with counsel at least twice</p> <p>10 prior to that time.</p> <p>11 Were those -- was the first meeting in</p> <p>12 person?</p> <p>13 A. Yes.</p> <p>14 Q. Where did you meet?</p> <p>15 A. In Bozeman, Montana.</p> <p>16 Q. Who did you meet with? Who was present?</p> <p>17 A. Jim Robinson with Gordon & Rees was</p> <p>18 present with me. There was other counsel on the</p> <p>19 phone, including Mark Prost, Andrew Cary. Oh, and</p> <p>20 Dave Marek.</p> <p>21 Q. Who is Dave Marek?</p> <p>22 A. He's a geologist.</p> <p>23 Q. And what's -- is he an employee of</p> <p>24 Imerys?</p> <p>25 A. He's an Imerys employee. I'm not sure</p>	<p style="text-align: right;">Page 21</p> <p>1 described?</p> <p>2 A. The only two -- the only person present</p> <p>3 with me, again, was Jim Robinson. The others were</p> <p>4 on the phone.</p> <p>5 MS. O'DELL: And I don't know Mr. Robinson,</p> <p>6 but I believe he is counsel for Imerys; is that</p> <p>7 correct?</p> <p>8 MR. SILVER: Yes.</p> <p>9 MR. PROST: Yes.</p> <p>10 Q. (By Ms. O'Dell) And in terms of counsel</p> <p>11 on the phone, who participated by telephone?</p> <p>12 A. As I said, Mr. Prost and Andrew Cary.</p> <p>13 Q. How long did the meeting last?</p> <p>14 A. I think maybe four hours or so. It's</p> <p>15 been a while. And I have had subsequent meetings</p> <p>16 with counsel. It's kind of running together, the</p> <p>17 time frames.</p> <p>18 Q. Other than -- were there any other</p> <p>19 Imerys employees on the telephone besides</p> <p>20 Mr. Marek?</p> <p>21 A. No.</p> <p>22 Q. What was the purpose for having</p> <p>23 Mr. Marek on the phone call?</p> <p>24 A. He had information about the geology and</p> <p>25 mine-planning of the Argonaut Mine in Vermont.</p>

6 (Pages 18 to 21)

Patrick Downey

<p style="text-align: right;">Page 22</p> <p>1 Q. You've been an employee of Imerys, or 2 Luzenac, previously, since 1994, I believe? 3 A. No. 1998. 4 Q. '98, okay. 5 And do you have an understanding as to how 6 long Mr. Marek has been employed by Imerys? 7 A. I don't know when he began, so I -- I 8 don't know. 9 Q. Was it before you started with the 10 company? 11 A. No. I believe it was after I started. 12 Q. Without having a specific year in mind, 13 do you have a general understanding? Has he been 14 an employee more than ten years, for example, to 15 your knowledge? 16 A. Yes, more than ten. 17 Q. Used to, ten years ago, it seemed like 18 it wasn't -- it was a long time, but that only puts 19 us at 2008. 20 Let me ask. Was Mr. Marek a geologist with 21 Imerys during the time period that the Vermont 22 mines sourced talc for J&J? 23 A. Perhaps at the very end. 24 Q. And that would put us at 2002 or so? 25 A. 2003.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I don't have a specific number. 2 Q. Can you give me an estimate? 3 A. Not really, no. 4 Q. Was it more than 50? 5 A. Probably, yeah. 6 Q. Was it more than 75? 7 A. I'd say so. More than a hundred. 8 Q. Well, it seems like you've got some idea 9 of how many there were. 10 So can you estimate for me? Generally 11 speaking, how many documents were you provided? 12 A. I don't think I could estimate 13 accurately anything more than a hundred. And those 14 were the ones that -- there were a number of 15 documents that I received. Some of them were, you 16 know, types of information, and I only up -- you 17 know, looked at examples of some. So I didn't 18 count them all, so I don't really have an estimate. 19 Q. When did you receive those documents? 20 A. Early July. 21 Q. And were they provided basically all at 22 one time? 23 A. I think most of them, yes. 24 Q. Were they sent to you by counsel or an 25 employee of Imerys?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And so as I understand it, that was your 2 first meeting with counsel -- your first meeting in 3 person with counsel; is that fair? 4 A. That's my recollection, yes. 5 Q. Prior to that meeting, how many 6 telephone calls had you had with counsel for 7 Imerys? 8 A. I think one, just to let me know that I 9 had been designated for certain topics. And we 10 just discussed the logistics of how I needed to 11 be -- come prepared -- 12 MR. PROST: Pat, obviously, don't share any 13 communications with counsel that are protected by 14 attorney-client privilege. I think you've said 15 enough. 16 Q. (By Ms. O'Dell) Were you provided 17 documents to review in order to prepare for your 18 deposition? 19 A. Yes. I received some documents. 20 Q. Did you receive them electronically or 21 in hard copy? 22 A. I think the majority of them 23 electronically. 24 Q. Approximately how many documents were 25 you provided for your preparation?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Mr. Marek sent me . . . 2 Q. Did you undertake to go through the 3 database or files at Imerys in order to educate 4 yourself for your deposition today? 5 A. I'm not sure what you mean by 6 "database." 7 Q. Let's see. 8 Did you -- I mean, you're an employee of 9 Imerys, correct? 10 A. Yes, I am. 11 Q. And as an employee and in your specific 12 title -- didn't put that on your record. 13 Your specific title at this point is 14 director of NPD engineering? 15 A. That's right. 16 Q. So what does NPD -- 17 A. New product development. 18 Q. And, you know, in your role as an 19 employee of Imerys, did you look through common 20 databases of documents or information in order to 21 educate yourself for your deposition? 22 A. Yes. Some of our quality protocols are 23 on the SharePoint system. 24 Q. And first, why did you decide to search 25 for these quality protocols for your deposition</p>

7 (Pages 22 to 25)

Patrick Downey

<p style="text-align: right;">Page 26</p> <p>1 today?</p> <p>2 A. Because they were listed amongst the</p> <p>3 topics that I had been designated for.</p> <p>4 Q. Is -- were they protocols that you would</p> <p>5 normally have familiarity with or employ in your</p> <p>6 role as director of NPD Engineering?</p> <p>7 A. In some cases, I would refer to those</p> <p>8 documents.</p> <p>9 Q. But that -- quality assurance is not</p> <p>10 your primary responsibility, correct?</p> <p>11 A. No.</p> <p>12 Q. And in terms of the protocols that you</p> <p>13 searched out, could you reference them either by</p> <p>14 topic for me, or number?</p> <p>15 A. I reviewed some of the quality protocols</p> <p>16 for our Houston facility, things about how we</p> <p>17 sample -- or how we control the receipt of</p> <p>18 shipments of ore from China, how we take a sample</p> <p>19 of it, how it's processed at the mill, how it's</p> <p>20 quarantined and how those samples are then passed</p> <p>21 on to our analytical group for analyses, things</p> <p>22 like that.</p> <p>23 Q. Did you print out copies of those</p> <p>24 protocols?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Mr. Cary, Mr. Prost and Mr. Robinson.</p> <p>2 Q. Anybody participate by telephone?</p> <p>3 A. I don't recall. I don't think so.</p> <p>4 Q. How long did the meeting last?</p> <p>5 A. We met for a day and a half.</p> <p>6 Q. Did you review documents during that</p> <p>7 meeting?</p> <p>8 A. More than likely. I don't recall the</p> <p>9 specific meeting.</p> <p>10 Q. Did you have any other phone calls</p> <p>11 during July regarding your testimony -- let me</p> <p>12 start again, just to make it clear. Sorry.</p> <p>13 You had a phone call with Miss Pier on</p> <p>14 July 27th?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any other phone calls with</p> <p>17 Imerys employees during the month of July?</p> <p>18 A. I think the call with Dave Marek was in</p> <p>19 early July. I think I already mentioned that.</p> <p>20 Q. Yeah. Thank you. Your answer was</p> <p>21 better than my question. Sorry.</p> <p>22 You'd been deposed a number of times,</p> <p>23 Mr. Downey, so I didn't go through the ground</p> <p>24 rules, but if I do ask you a bad question, you</p> <p>25 don't understand it, just let me know, and I'd be</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. O'DELL: I would -- Mr. Downey searched</p> <p>2 those out on his own. They were not provided to</p> <p>3 him by counsel. I don't think the attorney-client</p> <p>4 privilege applies. So we would ask for copies of</p> <p>5 whatever he pulled down from the SharePoint files</p> <p>6 in order to get a sense of what those were.</p> <p>7 MR. PROST: We'll discuss it on the break.</p> <p>8 Q. (By Ms. O'Dell) Mr. Downey, we talked</p> <p>9 about the first meeting you had in person at</p> <p>10 Bozeman, Montana. You mentioned there was two</p> <p>11 meetings before you actually had a phone call with</p> <p>12 Miss Pier.</p> <p>13 So when was the second meeting?</p> <p>14 A. Some -- it was before we met with</p> <p>15 Miss Pier. I don't recall a specific date. I'm</p> <p>16 sorry.</p> <p>17 Q. Was it in July?</p> <p>18 A. I believe so.</p> <p>19 Q. Where did the meeting take place?</p> <p>20 A. In Bozeman.</p> <p>21 Q. At your office in Bozeman?</p> <p>22 A. No.</p> <p>23 Q. Where?</p> <p>24 A. At a hotel.</p> <p>25 Q. Who was present?</p>	<p style="text-align: right;">Page 29</p> <p>1 happy to rephrase it.</p> <p>2 Okay. Let's move our attention back to the</p> <p>3 notes that you provided that, for the record, have</p> <p>4 been marked as Exhibit 5. You had a call with</p> <p>5 Miss Pier, Julie Pier, on July 27th.</p> <p>6 Who set up this call?</p> <p>7 A. Andrew Cary, I believe.</p> <p>8 Q. Who was on the phone call besides</p> <p>9 yourself and Miss Pier?</p> <p>10 A. Counsel, I believe Andrew Carry,</p> <p>11 Mr. Prost and Mr. Robinson.</p> <p>12 Q. How long did the call last?</p> <p>13 A. I think it was an hour.</p> <p>14 Q. And if you'll turn to page 2 of</p> <p>15 Exhibit 5, are those notes from the call with</p> <p>16 Miss Pier?</p> <p>17 A. On page 2?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. And actually, page 3 also has a notation</p> <p>21 "J.P."</p> <p>22 Does that stand for Miss Pier Julie Pier?</p> <p>23 A. Yes, it does.</p> <p>24 Q. And you note on page 2 of the exhibit</p> <p>25 that blast holes -- what did you discuss with</p>

8 (Pages 26 to 29)

Patrick Downey

Page 30	Page 32
<p>1 Miss Pier regarding blast holes?</p> <p>2 A. We discussed some of the testing of the</p> <p>3 blast holes. If the lab at the mine had detected</p> <p>4 amphibole, then a sample of the blast hole would be</p> <p>5 forwarded to Julie for further analysis.</p> <p>6 Q. And then was the discussion of blast</p> <p>7 holes primarily focused on Vermont?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Did you have any discussion of the</p> <p>10 drilling or blasting that was done in China?</p> <p>11 A. No, not with Miss Pier.</p> <p>12 Q. Following the notes here, you have</p> <p>13 "serpentine," I believe it's at least part of that,</p> <p>14 but I can't read your writing. Sorry. What is</p> <p>15 that?</p> <p>16 A. Serpentine.</p> <p>17 Q. Serpentine.</p> <p>18 What was your discussion with Miss Pier</p> <p>19 regarding serpentinite?</p> <p>20 A. She had also mentioned that they</p> <p>21 characterized the serpentinite core, specifically</p> <p>22 looking for asbestos minerals, and found none.</p> <p>23 They also tested a variety of waste-hole samples</p> <p>24 that covered the serpentinite, again looking</p> <p>25 specifically for asbestos minerals and found none.</p>	<p>1 A. That's true. I have not.</p> <p>2 Q. And to your knowledge, has Miss Pier</p> <p>3 ever visited the mines in China?</p> <p>4 A. I don't know.</p> <p>5 Q. Other than the three sort of larger</p> <p>6 topics that we've talked about -- blast holes,</p> <p>7 serpentinite and China -- were there any other</p> <p>8 topics that you discussed with Miss Pier?</p> <p>9 A. I think we discussed the general overall</p> <p>10 topics and how there was potential overlap between</p> <p>11 topics that she was designated for and I was</p> <p>12 designated for and where the -- where the cut-off,</p> <p>13 so to speak, would be.</p> <p>14 Q. And was it during this discussion that</p> <p>15 the decision was made not to designate you as a</p> <p>16 witness for Topic I, subsection 1, which relates to</p> <p>17 the composition of the talcum-powder products?</p> <p>18 A. I think it was discussed at that time.</p> <p>19 I don't know that the final decision was made at</p> <p>20 that phone call.</p> <p>21 Q. Let me ask you to turn to the next page</p> <p>22 of this exhibit. And they're not numbered, so we</p> <p>23 just have to follow along together and make sure we</p> <p>24 stay on the same page. But it appears to be notes</p> <p>25 from an 8/1 discussion. And that would be</p>
Page 31	Page 33
<p>1 Q. And during -- you note these are</p> <p>2 aggregate tests on the side.</p> <p>3 What time period did this testing take</p> <p>4 place?</p> <p>5 A. I don't recall if she mentioned the time</p> <p>6 frame. You can ask her.</p> <p>7 Q. Happy to do that. And we will ask her.</p> <p>8 But in terms of the specific results she's</p> <p>9 referring to, did she put any time parameters on</p> <p>10 that discussion?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you review any documents over the</p> <p>13 phone with Miss Pier?</p> <p>14 A. No.</p> <p>15 Q. On page 2 of your notes from your call,</p> <p>16 it references China. And what was your discussion</p> <p>17 with Miss Pier about China?</p> <p>18 A. Well, we don't control the mine in</p> <p>19 China, but I know that it's a topic that I had been</p> <p>20 designated for, so I asked Julie if she -- you</p> <p>21 know, if she could tell me what she knew about</p> <p>22 China. And these were the notes that I took about</p> <p>23 that.</p> <p>24 Q. And you've never been to the mines in</p> <p>25 China, true?</p>	<p>1 August the 1st?</p> <p>2 A. Yes.</p> <p>3 Q. And who is "Des. G"?</p> <p>4 A. Desiree Giroux.</p> <p>5 Q. I'll need a little help with that</p> <p>6 spelling.</p> <p>7 A. I'll try my best. G-i-r-o-u-x.</p> <p>8 Q. And the first name is Desiree?</p> <p>9 A. Desiree.</p> <p>10 Q. Desiree. So is that D-e-s-i-r --</p> <p>11 A. i-r-e-e.</p> <p>12 Q. i-r-e-e, okay.</p> <p>13 Who is Miss Pier Giroux?</p> <p>14 A. She is an employee at the Vermont talc</p> <p>15 mine, and she handles the quality program there</p> <p>16 now.</p> <p>17 Q. Did you talk with Miss Pier Giroux by</p> <p>18 telephone?</p> <p>19 A. Yes.</p> <p>20 Q. How long was your phone call?</p> <p>21 A. Maybe 15, 20 minutes.</p> <p>22 Q. And what was the purpose of your</p> <p>23 discussion with Miss Pier Giroux?</p> <p>24 A. To discuss the testing protocol for</p> <p>25 production and from blast holes of the Vermont</p>

9 (Pages 30 to 33)

Patrick Downey

<p style="text-align: right;">Page 34</p> <p>1 mine.</p> <p>2 Q. Who else was on the phone besides</p> <p>3 yourself and Miss Pier Giroux?</p> <p>4 A. No one else.</p> <p>5 Q. And do you know her title?</p> <p>6 A. I think it's HSEQ manager. HSEQ,</p> <p>7 health, safety, environment, quality.</p> <p>8 Q. And do you know how long she's held that</p> <p>9 position at the Vermont mines?</p> <p>10 A. Maybe four or five years. I'm not sure.</p> <p>11 Q. Was Miss Pier Giroux employed by Imerys</p> <p>12 and working at the Vermont mines during the time</p> <p>13 period that Vermont was sourcing talc to -- for</p> <p>14 Johnson & Johnson Baby Powder?</p> <p>15 A. I don't know when she hired on with us,</p> <p>16 but I believe it was after that period.</p> <p>17 Q. So to be clear, Miss Pier Giroux is the</p> <p>18 health and safety and quality manager --</p> <p>19 A. Currently.</p> <p>20 Q. -- currently, but she was not</p> <p>21 responsible for quality assurance during the time</p> <p>22 period when talc was being sourced for</p> <p>23 Johnson & Johnson talcum-powder products, true?</p> <p>24 A. That's true.</p> <p>25 Q. According to your notes here,</p>	<p style="text-align: right;">Page 36</p> <p>1 Robin Reilly, correct?</p> <p>2 A. Yeah. Actually, in fact, that was in</p> <p>3 person. It was last Friday or Saturday.</p> <p>4 Q. Friday ten days ago, or just a few days</p> <p>5 ago?</p> <p>6 A. Just a few days ago.</p> <p>7 Q. So that would have been August the 1st</p> <p>8 or 2nd?</p> <p>9 MR. PROST: 3rd.</p> <p>10 MS. O'DELL: 3rd. Oh, sorry. 3rd.</p> <p>11 Q. (By Ms. O'Dell) How did you come to</p> <p>12 meet with Miss Pier Reilly?</p> <p>13 A. She was in Montana.</p> <p>14 Q. And does she work in Montana?</p> <p>15 A. Pardon?</p> <p>16 Q. Is she an employee of Imerys Montana?</p> <p>17 A. No. She still works out of Vermont, but</p> <p>18 she was out in Montana on business.</p> <p>19 Q. Okay. Was the purpose of</p> <p>20 Miss Pier Reilly's trip to Montana to meet with you</p> <p>21 for purposes of preparing for your deposition?</p> <p>22 A. No.</p> <p>23 Q. What's her position presently?</p> <p>24 A. She handles land management and</p> <p>25 reclamation activities and permitting activities.</p>
<p style="text-align: right;">Page 35</p> <p>1 Miss Pier Giroux expressed to you that daily</p> <p>2 product composites are made by mill operators, and</p> <p>3 then it says, "from in-process samples analyzed by</p> <p>4 XRD." And then what's the next?</p> <p>5 A. Leco, L-e-c-o.</p> <p>6 Q. "...to determine daily," and I assume</p> <p>7 that's "mineralogy"?</p> <p>8 A. That's right.</p> <p>9 Q. Do you have an understanding from</p> <p>10 Miss Pier Giroux how long that, approximately, was</p> <p>11 in place?</p> <p>12 A. It predates her. My understanding is</p> <p>13 that it goes back -- I think it was consistent with</p> <p>14 the time period -- it was a program that was in</p> <p>15 place when Cyprus purchased Windsor Minerals in</p> <p>16 1989.</p> <p>17 Q. What do you base that understanding on?</p> <p>18 A. I also had a phone call with Robin</p> <p>19 Reilly, and she told me what happened from, like,</p> <p>20 1998 going forward. And her description lined up</p> <p>21 with what Miss Pier Giroux said.</p> <p>22 And I've also seen documents of the protocol</p> <p>23 that was in place in 1989. So they're consistent</p> <p>24 with one another.</p> <p>25 Q. When did you talk with Miss Pier Reilly?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. At Vermont?</p> <p>2 A. At Vermont, yes.</p> <p>3 Q. And did -- has Miss Pier Reilly had</p> <p>4 responsibility for sampling and quality assurance</p> <p>5 at Vermont?</p> <p>6 A. From 1998, when she hired on, for a few,</p> <p>7 maybe several years, she worked in the QA lab at</p> <p>8 the local facility.</p> <p>9 Q. Was she a technician in the lab?</p> <p>10 A. I know she did lab analyses. I don't</p> <p>11 know if -- what her title was at that period.</p> <p>12 Q. What's her educational background?</p> <p>13 A. I'm not sure.</p> <p>14 Q. As a person who was in the lab doing</p> <p>15 analyses, whatever -- well, let me ask you.</p> <p>16 Do you know what type of analyses that she</p> <p>17 was tasked to perform during that time period?</p> <p>18 A. She did XRD, Leco anatomic absorption</p> <p>19 analyses.</p> <p>20 Q. And the --</p> <p>21 A. Perhaps others. Those were ones we</p> <p>22 discussed.</p> <p>23 Q. And for that time period, her</p> <p>24 responsibility focused on performing analyses in</p> <p>25 the lab. It was not -- she was not involved in</p>

10 (Pages 34 to 37)

Patrick Downey

<p style="text-align: right;">Page 38</p> <p>1 actually taking samples, correct?</p> <p>2 A. I'm not sure what you're asking.</p> <p>3 Q. Let's see if I can be more clear.</p> <p>4 Her responsibilities related to performing</p> <p>5 analyses on samples when they came to the lab,</p> <p>6 true?</p> <p>7 A. Generally speaking, yes, but I can't say</p> <p>8 whether or not she also had to go take samples. I</p> <p>9 don't know. I didn't ask her that.</p> <p>10 Q. You don't know, one way or the other?</p> <p>11 A. No.</p> <p>12 Q. Did you reach out to Miss Pier Reilly or</p> <p>13 did someone else facilitate the meeting with her?</p> <p>14 A. I reached out to her.</p> <p>15 Q. How long was your discussion with</p> <p>16 Miss Pier Reilly?</p> <p>17 A. Ten minutes, I think.</p> <p>18 Q. Let me ask you to turn the page in the</p> <p>19 exhibit, Mr. Downey, and there are some notes that</p> <p>20 are titled "8/1 phone call with D. Crouse and</p> <p>21 counsel." And it says 7 to 9 a.m.</p> <p>22 Is that the length of the call with</p> <p>23 Mr. Crouse and counsel?</p> <p>24 A. Yes.</p> <p>25 Q. And who is D. Crouse?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. There are several pages of notes here.</p> <p>2 We discussed the general nature -- the general</p> <p>3 geology of the talc deposit at Argonaut, and he</p> <p>4 explained to me in pretty good detail about the</p> <p>5 metamorphic processes about the deposits and why</p> <p>6 there are geologic reasons for the absence of</p> <p>7 chrysotile with respect to that deposit.</p> <p>8 Q. Is it your testimony that there is no</p> <p>9 chrysotile in the Argonaut Mine?</p> <p>10 A. That's correct.</p> <p>11 Q. And other than your phone call with</p> <p>12 Mr. Crouse, what do you base that statement on?</p> <p>13 A. Mr. Crouse also gave two depositions,</p> <p>14 and he gave descriptions in those depositions of</p> <p>15 that as well as his bases for making that -- or</p> <p>16 making those statements.</p> <p>17 Q. Did you review those depositions prior</p> <p>18 to your testimony today?</p> <p>19 A. Yes, I did.</p> <p>20 Q. While I'm on the subject, did you review</p> <p>21 any other depositions of any witness in the</p> <p>22 talcum-powder litigation in preparation for your</p> <p>23 deposition?</p> <p>24 A. No.</p> <p>25 Q. Did you review Miss Pier's depositions</p>
<p style="text-align: right;">Page 39</p> <p>1 A. David Crouse.</p> <p>2 Q. And is he an employee of Imerys?</p> <p>3 A. He's a former employee.</p> <p>4 Q. And what was his role as a former</p> <p>5 employee?</p> <p>6 A. He had a number of roles, but he's a</p> <p>7 geologist, so he's done exploration geology, mine</p> <p>8 planning, ore control, a lot of things related to</p> <p>9 the ores in the talc mines that we have.</p> <p>10 Q. Was Mr. Crouse ever charged with</p> <p>11 responsibility for mining process in Vermont?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And what was his responsibility?</p> <p>14 A. The ore reserves of the deposit, the</p> <p>15 development aspects of it and also ore-control</p> <p>16 measures.</p> <p>17 Q. And during what time period was</p> <p>18 Mr. Crouse involved with the talc mines in Vermont?</p> <p>19 A. In the late 1990s and early 2000s.</p> <p>20 Q. And so his involvement, just to make</p> <p>21 sure I understood what you were saying -- he had</p> <p>22 responsibility in relation to Vermont talc mines</p> <p>23 from the late '90s to early 2000s, fair?</p> <p>24 A. That's my recollection.</p> <p>25 Q. What did you discuss with Mr. Crouse?</p>	<p style="text-align: right;">Page 41</p> <p>1 or trial testimony prior to your deposition?</p> <p>2 A. No.</p> <p>3 Q. Did you review your own testimony from</p> <p>4 either trial or deposition prior to the testimony</p> <p>5 today?</p> <p>6 A. No.</p> <p>7 Q. You said Mr. Crouse is a former employee</p> <p>8 of Imerys?</p> <p>9 A. Yes.</p> <p>10 Q. What's he doing now?</p> <p>11 A. He works for a different minerals</p> <p>12 company.</p> <p>13 Q. And what's the name of that company?</p> <p>14 A. I believe it's Omya, O-m-y-a.</p> <p>15 Q. Does Mr. Crouse reside in Vermont?</p> <p>16 A. No.</p> <p>17 Q. Where does he reside?</p> <p>18 A. In Ohio, I believe.</p> <p>19 Q. And I didn't ask you this.</p> <p>20 Who, other than yourself and Mr. Crouse, was</p> <p>21 on the telephone call?</p> <p>22 A. Counsel.</p> <p>23 Q. Who?</p> <p>24 A. Mr. Cary, Prost, Robinson, I believe</p> <p>25 Sarah O'Donahue from Alston & Bird, and Rodrigo</p>

11 (Pages 38 to 41)

Patrick Downey

Page 42	Page 44
<p>1 Salas from Alston & Bird, also.</p> <p>2 Q. Let me ask you to turn over what appears</p> <p>3 to be the third page of your notes with -- from</p> <p>4 your phone call with Mr. Crouse.</p> <p>5 It says "amphibole" at the top of the page;</p> <p>6 do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And in relation to your conversation</p> <p>9 with Mr. Crouse, you mentioned you discussed the</p> <p>10 Argonaut Mine.</p> <p>11 Was the primary focus of your conversation</p> <p>12 the Argonaut mineral deposit and mine?</p> <p>13 A. We also discussed China as well, but we</p> <p>14 probably spent more time on Argonaut.</p> <p>15 Q. Did you discuss any of the other mines</p> <p>16 or deposits that Imerys owns in Vermont?</p> <p>17 MR. PROST: Object to form.</p> <p>18 Q. (By Ms. O'Dell) Such as Hammondsville,</p> <p>19 Hamm, Rainbow, Black Bear, or any of the other</p> <p>20 mines?</p> <p>21 A. I believe I asked Dave if he knew about</p> <p>22 those deposits. My recollection is is that he</p> <p>23 hadn't visited those during his time period. They</p> <p>24 were already -- had been phased out. That's my</p> <p>25 general recollection.</p>	<p>1 fiber can be fibrous, true?</p> <p>2 MR. PROST: Object to form.</p> <p>3 A. I disagree.</p> <p>4 Q. (By Ms. O'Dell) If other geologists who</p> <p>5 were working in Argonaut wrote contemporaneous</p> <p>6 notes supporting the conclusion that transitional</p> <p>7 fibers -- transitional minerals can be fibrous,</p> <p>8 would you disagree with that?</p> <p>9 MR. PROST: Object to form.</p> <p>10 A. I'd have to see a document, if you're</p> <p>11 saying that that was said, but I would disagree</p> <p>12 with that.</p> <p>13 Q. (By Ms. O'Dell) I made a little chart</p> <p>14 here in your notes. And let me see if I can</p> <p>15 operate this effectively.</p> <p>16 I said "fibrous," then I put "disagree."</p> <p>17 That's your statement to me, right? You don't</p> <p>18 believe transitional fibers can be fibrous?</p> <p>19 MR. PROST: Object to form.</p> <p>20 A. In this transitional zone where I've</p> <p>21 made notes, there's nothing to do with fibers</p> <p>22 there. That's the serpentinite. It's not fibrous.</p> <p>23 Q. (By Ms. O'Dell) And you're basing that</p> <p>24 on your discussion with Mr. Crouse?</p> <p>25 A. Yes, as well as the evidence of what we</p>
Page 43	Page 45
<p>1 Q. Now, in the middle of the page,</p> <p>2 Mr. Downey says "Argonaut"; do you see that in the</p> <p>3 middle of the page?</p> <p>4 A. Yes.</p> <p>5 Q. And it has a word I can't read. What</p> <p>6 does that say?</p> <p>7 A. "Dunitic."</p> <p>8 Q. "Argonaut dunitic serpentinite was</p> <p>9 altered from the outside toward the inter (sic)</p> <p>10 core"; did I read that correctly?</p> <p>11 A. "Inner core." Yes.</p> <p>12 Q. "Worked from west towards the east where</p> <p>13 we see the remnants of the dunitic serpentinite,"</p> <p>14 and then there's a word cut off there.</p> <p>15 A. "Core."</p> <p>16 Q. "Core."</p> <p>17 You say, "Can be a transitional zone,</p> <p>18 narrow, where the serpentinite is not completely</p> <p>19 altered to talc magnesite"; did I read that</p> <p>20 correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And would you agree with me, Mr. Downey,</p> <p>23 that those areas of transition where, by pressure</p> <p>24 and heat, there's been a metamorphosis where the</p> <p>25 alteration is not complete, that that transitional</p>	<p>1 know about the serpentinite. It's a bladed habit,</p> <p>2 but it's not fibrous.</p> <p>3 Q. We'll get to that.</p> <p>4 You made a chart here about asbestiform</p> <p>5 fibers; do you see that? And let's just see if we</p> <p>6 can agree on terminology today. You have</p> <p>7 "serpentine"; do you see that? And then you have</p> <p>8 as an asbestos variety.</p> <p>9 Chrysotile is an asbestos-form serpentine</p> <p>10 mineral, true?</p> <p>11 A. Chrysotile is the asbestos variety of</p> <p>12 serpentine, but serpentine itself is nonasbestos.</p> <p>13 Q. But serpentine can be asbestos, true?</p> <p>14 A. No. Chrysotile is asbestos.</p> <p>15 Q. Well, chrysotile is a subset of</p> <p>16 serpentine generally. It's just a fibrous form of</p> <p>17 serpentine, true?</p> <p>18 MR. PROST: Object to form.</p> <p>19 Q. (By Ms. O'Dell) True?</p> <p>20 A. The serpentinite at Argonaut, as I</p> <p>21 recall, I think, is the mineral lizardite. I think</p> <p>22 that's what it's called. And that is nonasbestos.</p> <p>23 Chrysotile is the asbestos variety of serpentine.</p> <p>24 Q. And your testimony is that chrysotile</p> <p>25 has never been found at Argonaut?</p>

12 (Pages 42 to 45)

Patrick Downey

Page 46	Page 48
<p>1 A. That's correct.</p> <p>2 Q. And then you go further and you talk</p> <p>3 about amphiboles; do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then you say "nonasbestos" in your</p> <p>6 chart.</p> <p>7 You take the position that tremolite is</p> <p>8 nonasbestos -- is a nonasbestos amphibole?</p> <p>9 A. What this chart was, for me, is of</p> <p>10 these -- of the six asbestos minerals, most of them</p> <p>11 are amphiboles, but then you also have the</p> <p>12 serpentine group. And so it's just a sample chart</p> <p>13 that shows the nonasbestos varieties and then also</p> <p>14 lists the asbestos varieties.</p> <p>15 Q. And so --</p> <p>16 A. That's all I was doing here.</p> <p>17 Q. Okay. And so you would agree, just to</p> <p>18 make sure I'm reading your chart right, tremolite</p> <p>19 can be asbestos?</p> <p>20 MR. PROST: Object to form.</p> <p>21 Q. (By Ms. O'Dell) It's on your chart</p> <p>22 here.</p> <p>23 A. When described as tremolite asbestos, it</p> <p>24 would be asbestos, but just because you have the</p> <p>25 mineral tremolite, that doesn't mean that every</p>	<p>1 occur in an asbestiform variety?</p> <p>2 A. When identified as actinolite asbestos,</p> <p>3 I would agree that it's asbestos.</p> <p>4 Q. And it's your position -- you're taking</p> <p>5 this on behalf of the company -- that if it just</p> <p>6 refers to actinolite, then it's not asbestiform?</p> <p>7 MR. PROST: Object to form; outside the</p> <p>8 scope.</p> <p>9 A. Again, it depends on the context.</p> <p>10 Q. (By Ms. O'Dell) Anthophyllite is also</p> <p>11 considered to be an asbestos variety, true?</p> <p>12 A. Again, when identified mineralogically</p> <p>13 as anthophyllite asbestos, that's when it's</p> <p>14 asbestos.</p> <p>15 Q. And it's your position, if it doesn't</p> <p>16 have asbestos anthophyllite, then it's not an</p> <p>17 asbestiform type, true?</p> <p>18 MR. PROST: Object to form.</p> <p>19 A. Again, it depends on the context of</p> <p>20 whatever's written, what it's written about, as</p> <p>21 well as time frame.</p> <p>22 Q. (By Ms. O'Dell) What do you mean by</p> <p>23 time frame?</p> <p>24 A. Mineralogically, since the 1970s and</p> <p>25 1980s, 1990s, there's great confusion about the</p>
Page 47	Page 49
<p>1 time you see the word "tremolite" that you're</p> <p>2 talking about asbestos.</p> <p>3 Q. It also doesn't mean it's not asbestos,</p> <p>4 true?</p> <p>5 MR. PROST: Object to form.</p> <p>6 A. In what context?</p> <p>7 Q. (By Ms. O'Dell) If it says</p> <p>8 "tremolite" -- "tremolite" only, you can't always</p> <p>9 assume that that means it's a non-asbestiform-type</p> <p>10 of tremolite, true?</p> <p>11 MR. PROST: Object to form; outside the</p> <p>12 scope.</p> <p>13 A. It would depend on the context of what's</p> <p>14 written.</p> <p>15 Q. (By Ms. O'Dell) Okay. So --</p> <p>16 A. I'm not going to -- this is merely a</p> <p>17 list of minerals.</p> <p>18 Q. Okay. Well, and I'm working through it</p> <p>19 with you, because I want to know what your</p> <p>20 understanding is, part of us being able to work</p> <p>21 through the documents we're going to go through</p> <p>22 later.</p> <p>23 Would you agree that tremolite -- excuse</p> <p>24 me -- strike that.</p> <p>25 Would you agree that actinolite can also</p>	<p>1 actual identification of the asbestos varieties of</p> <p>2 the minerals.</p> <p>3 Q. Okay. If you'll turn on the next page,</p> <p>4 is this a continuation of your notes from your</p> <p>5 discussion with Mr. Crouse?</p> <p>6 A. Yes.</p> <p>7 Q. And you're discussing specifically ore</p> <p>8 for J&J. And your first note is related to the</p> <p>9 West Windsor float feed.</p> <p>10 What is your understanding of what that</p> <p>11 refers to?</p> <p>12 MR. PROST: Object to form. I'm not sure</p> <p>13 where you're looking.</p> <p>14 Q. (By Ms. O'Dell) I thought I just turned</p> <p>15 the page.</p> <p>16 MR. PROST: Oh, we're in the middle of the</p> <p>17 page where it says "West Windsor float feed," okay.</p> <p>18 Object to form.</p> <p>19 Q. (By Ms. O'Dell) Well, to be clear, I</p> <p>20 was on this page -- I'm going in order -- I was on</p> <p>21 this page with your chart here. And I turned the</p> <p>22 page, and this is what I have.</p> <p>23 MS. O'DELL: So do y'all have something</p> <p>24 different?</p> <p>25 MR. PROST: Looks like maybe we do. Can you</p>

13 (Pages 46 to 49)

Patrick Downey

Page 50	Page 52
<p>1 show me what you have there?</p> <p>2 MS. O'DELL: Yeah. Do you have this page in</p> <p>3 your exhibit?</p> <p>4 MR. PROST: I'm looking for it. That's not</p> <p>5 our next page. I'm checking to see where it is.</p> <p>6 THE WITNESS: I didn't see it. It's not in</p> <p>7 my stack.</p> <p>8 Q. (By Ms. O'Dell) Well, I promise you, I</p> <p>9 did not write this. I didn't make it up. So this</p> <p>10 was given to me.</p> <p>11 I'm assuming they're your -- that's your</p> <p>12 handwriting, right?</p> <p>13 MR. PROST: Can we go off the record for a</p> <p>14 second? If I could take a look at it.</p> <p>15 (A discussion held off the stenographic</p> <p>16 record.)</p> <p>17 VIDEOGRAPHER: Off the record at 10:42.</p> <p>18 (Recess taken.)</p> <p>19 VIDEOGRAPHER: We are back on the record at</p> <p>20 10:53.</p> <p>21 Q. (By Ms. O'Dell) Mr. Downey, before we</p> <p>22 went on the break, we were talking about Exhibit 5,</p> <p>23 this is my marked copy that's in front of you, your</p> <p>24 notes that you took in preparation for your</p> <p>25 deposition. Specifically we were focused on -- I</p>	<p>1 pit. In Crouse's prior depositions, I had read</p> <p>2 where he referenced the Argonaut main and the</p> <p>3 Argonaut east, and I was trying to first question</p> <p>4 which area we were talking about, so that's what</p> <p>5 the notation for "Argonaut main" was. And it had</p> <p>6 been mined out before Mr. Crouse was working there.</p> <p>7 Q. But Johnson & Johnson's Baby Powder was</p> <p>8 sourced by Argonaut main prior to Mr. Crouse's</p> <p>9 tenure with the company, true?</p> <p>10 A. I don't know.</p> <p>11 Q. In terms of Argonaut east, what was your</p> <p>12 discussion? And let me start by saying, what does</p> <p>13 "Argonaut east" refer to?</p> <p>14 A. What Mr. Crouse described was the east</p> <p>15 Argonaut ore body or actually mine area.</p> <p>16 Q. That's part of the same ore body as</p> <p>17 Argonaut main.</p> <p>18 It's one ore body, correct?</p> <p>19 A. They are of the same geology. It's just</p> <p>20 proximity and how the mine is developed, whether it</p> <p>21 was in one pit versus the other.</p> <p>22 Q. Have you ever been to the Argonaut Mine?</p> <p>23 A. Yes.</p> <p>24 Q. When?</p> <p>25 A. First time was, I think, in 2000 or</p>
Page 51	Page 53
<p>1 think it's the third page of your notes in relation</p> <p>2 to your conversation with David Crouse.</p> <p>3 A. Yes.</p> <p>4 Q. And the note at the top indicates you</p> <p>5 were discussing with Mr. Crouse ore for J&J or</p> <p>6 Johnson & Johnson?</p> <p>7 A. Yes.</p> <p>8 Q. And the West Windsor float is listed</p> <p>9 under that heading.</p> <p>10 What'd you discuss with Mr. Crouse regarding</p> <p>11 the West Windsor float?</p> <p>12 A. West Windsor was the flotation plant in</p> <p>13 Vermont where grade 66, the talc product we</p> <p>14 manufactured for Johnson & Johnson, was made. So</p> <p>15 we discussed the ore for the West Windsor flotation</p> <p>16 feed.</p> <p>17 Q. Which, during Mr. Krauss' time frame,</p> <p>18 came from Argonaut?</p> <p>19 A. That's correct.</p> <p>20 Q. And specifically, you focused first on</p> <p>21 Argonaut main.</p> <p>22 And what did you discuss in relation to</p> <p>23 Argonaut main? Which I'm assuming is short for</p> <p>24 main ore body, correct?</p> <p>25 A. No, that references the Argonaut main</p>	<p>1 2001.</p> <p>2 Q. What was the reason for your visit?</p> <p>3 A. I was working at the Yellowstone Mine at</p> <p>4 the time. And I had done a technical processing</p> <p>5 project. And we had a technical meeting in</p> <p>6 Vermont. And while I was there, I got a tour of</p> <p>7 the operations.</p> <p>8 Q. Was the technical meeting in Vermont</p> <p>9 related to the operation of the West Windsor</p> <p>10 processing plant?</p> <p>11 A. No.</p> <p>12 Q. What was it --</p> <p>13 A. Not that I remember.</p> <p>14 Q. What did it involve?</p> <p>15 A. It was a technical meeting where process</p> <p>16 engineers got together and we presented our</p> <p>17 projects to our colleagues.</p> <p>18 Q. So Vermont happened to be the location,</p> <p>19 but the meeting was not focused solely on the</p> <p>20 operations in Vermont? You were presenting on your</p> <p>21 projects in Montana?</p> <p>22 A. Yes. I presented a project regarding</p> <p>23 Montana.</p> <p>24 Q. In other words, it was a general meeting</p> <p>25 of project engineers?</p>

14 (Pages 50 to 53)

Patrick Downey

Page 54	Page 56
<p>1 A. Yes. Yes.</p> <p>2 Q. Other than that one occasion, have you</p> <p>3 been to the Argonaut Mine?</p> <p>4 A. Yes.</p> <p>5 Q. How many times have you been to</p> <p>6 Argonaut?</p> <p>7 A. Maybe four, maybe six over the -- you</p> <p>8 know, since 2000, so over the last 15 years,</p> <p>9 so . . .</p> <p>10 Q. And let me ask you, in terms of your</p> <p>11 visits to the Argonaut Mine, were they for purposes</p> <p>12 of other general meetings?</p> <p>13 A. Other general meetings, yes, mostly.</p> <p>14 And we've -- my team has worked on a large project</p> <p>15 in the plant there for the last few years, and so</p> <p>16 I've been to Vermont quite a number of times.</p> <p>17 Q. And what plant are you referring to?</p> <p>18 A. Hmm?</p> <p>19 Q. What plant are you referring to?</p> <p>20 A. Ludlow Mill.</p> <p>21 Q. Have you had any involvement in relation</p> <p>22 to projects or work for the West Windsor Mill?</p> <p>23 A. No.</p> <p>24 Q. And just so it's clear for the record,</p> <p>25 the Ludlow Mill was not used to process talc for</p>	<p>1 Q. Is it your understanding that cinders do</p> <p>2 not involve fibrous material?</p> <p>3 A. My notes here from our -- my discussion</p> <p>4 with Mr. Crouse, he said that there are no asbestos</p> <p>5 minerals associated with the cinders. It was only</p> <p>6 chloride and quartz.</p> <p>7 Q. So that's what Mr. Crouse told you?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Did you -- well, what, if anything else,</p> <p>10 did you do to assure yourself that Mr. Crouse gave</p> <p>11 you accurate information?</p> <p>12 MR. PROST: Object to form.</p> <p>13 A. I'm not sure what you mean. We had</p> <p>14 discussions with Mr. Crouse. I was able to ask him</p> <p>15 questions and follow-up questions, so I think my</p> <p>16 notes indicate that we talked about a wide variety</p> <p>17 of questions.</p> <p>18 Q. (By Ms. O'Dell) Did you do any</p> <p>19 independent research regarding cinders as they're</p> <p>20 present in the Argonaut deposit?</p> <p>21 A. I reviewed other geologic papers related</p> <p>22 to the general geology of Vermont as well as some</p> <p>23 geologic descriptions of Argonaut itself.</p> <p>24 Q. And what papers are you referring to?</p> <p>25 A. There were some geology reports that</p>
Page 55	Page 57
<p>1 Johnson & Johnson's Baby Powder products, true?</p> <p>2 A. Only the crushing was done at Ludlow.</p> <p>3 Q. But the processing and other</p> <p>4 manufacturing processes, such as the float feed,</p> <p>5 took place at West Windsor, true?</p> <p>6 A. That's correct. Yes.</p> <p>7 Q. You mentioned that you had visited the</p> <p>8 Argonaut Mine itself four to six times?</p> <p>9 A. Thereabouts. Yes.</p> <p>10 Q. Have you had any responsibility for the</p> <p>11 operation of the Argonaut Mine?</p> <p>12 A. No.</p> <p>13 Q. Have you been tasked to work on any</p> <p>14 projects specifically related to the mining</p> <p>15 operation of the Argonaut Mine?</p> <p>16 A. I don't think so.</p> <p>17 Q. So looking back to your notes -- let me</p> <p>18 move the page up here -- you say, "Localized narrow</p> <p>19 zones of cinders where (sic) selectively</p> <p>20 removed" -- "were," excuse me -- "were selectively</p> <p>21 removed."</p> <p>22 What's your understanding of the term</p> <p>23 "cinder"?</p> <p>24 A. Cinders is a dark zone of mostly</p> <p>25 chloride with quartz.</p>	<p>1 Dave Marek gave me.</p> <p>2 Q. Were those Imerys internal documents?</p> <p>3 A. Some of them were geologic papers by</p> <p>4 government institutions. I think one or two were</p> <p>5 either Imerys or Rio Tinto Minerals documents,</p> <p>6 depending on time frame.</p> <p>7 Q. What -- were any of the papers that</p> <p>8 you're referring to peer-reviewed geology</p> <p>9 publications?</p> <p>10 A. Which ones? I'm not sure what you're</p> <p>11 asking.</p> <p>12 Q. Well, you said you reviewed geologic</p> <p>13 papers in addition to your discussion with</p> <p>14 Mr. Crouse, and I'm trying to understand what</p> <p>15 papers you're referring to.</p> <p>16 A. I don't recall which publications these</p> <p>17 were in, so I can't answer to whether they were</p> <p>18 peer-reviewed or not.</p> <p>19 Q. Do you recall the authors of the</p> <p>20 publications?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you have copies of those --</p> <p>23 A. Yes.</p> <p>24 MS. O'DELL: Mark, since those were provided</p> <p>25 by an Imerys employee, we would ask that those be</p>

15 (Pages 54 to 57)

Patrick Downey

Page 58	Page 60
<p>1 made available to us.</p> <p>2 MR. PROST: We can discuss that also on the</p> <p>3 break.</p> <p>4 Q. (By Ms. O'Dell) Looking at the next</p> <p>5 page of your notes, Mr. Downey, it appears that</p> <p>6 these notes also were made during your call with</p> <p>7 Mr. Crouse.</p> <p>8 A. I just need to get there. Okay. Yes,</p> <p>9 they were.</p> <p>10 Q. And pronounce the first -- spell and</p> <p>11 pronounce the first word you've written there.</p> <p>12 A. Lamprophyre, l-a-m-p-r-o-p-h-y-r-e.</p> <p>13 Q. I'm going to make your "r" a little</p> <p>14 bit -- you're like me. Sometimes your R's sort of</p> <p>15 don't -- so I just -- I made a little curl.</p> <p>16 So dikes?</p> <p>17 A. Yes.</p> <p>18 Q. Are those often composed of a chloride?</p> <p>19 A. They are mafic dikes. They are -- my</p> <p>20 notes indicate pyroxene, biotite, hornblende,</p> <p>21 magnetite, olivine and feldspar.</p> <p>22 Q. Do you know if they're often composed of</p> <p>23 chlorite, in fact, in Argonaut deposit or composed</p> <p>24 of chlorite?</p> <p>25 MR. PROST: Object to form.</p>	<p>1 A. The report indicated that tremolite --</p> <p>2 that -- the way -- I think the report said fibrous</p> <p>3 tremolite was identified in a waste-rock sample.</p> <p>4 Q. So the answer to my question is "yes"?</p> <p>5 A. What was your question again?</p> <p>6 Q. My question was, the report indicated</p> <p>7 fibrous tremolite was found from a sample that was</p> <p>8 taken from the Argonaut Mine, true?</p> <p>9 A. From the fringe area of the Argonaut</p> <p>10 Mine.</p> <p>11 Q. How do you know it was the fringe area?</p> <p>12 A. Because I wanted to know where in</p> <p>13 relationship that occurrence was relative to the</p> <p>14 ore body.</p> <p>15 Q. Do you know what drill hole it was --</p> <p>16 the sample was associated with?</p> <p>17 A. I believe it was drill hole 98-02.</p> <p>18 Q. Let me just -- 98?</p> <p>19 A. Yes.</p> <p>20 Q. Dash?</p> <p>21 A. 02.</p> <p>22 Q. 02.</p> <p>23 And that would mean a drill hole that was</p> <p>24 drilled in 1998?</p> <p>25 A. Yes.</p>
Page 59	Page 61
<p>1 A. I don't recall.</p> <p>2 Q. (By Ms. O'Dell) Toward the lower half</p> <p>3 of the page, you have the letters and numbers</p> <p>4 A0170.9; is that correct?</p> <p>5 A. No. That's just a 9.</p> <p>6 Q. Just a 9. And 2002?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. Does that refer to a sample that was</p> <p>9 taken from Argonaut in 2002?</p> <p>10 A. That's in reference to a technical</p> <p>11 report. That's a report identifier.</p> <p>12 Q. And what type of report is it?</p> <p>13 A. It's an analytical report.</p> <p>14 Q. Is it a testing report?</p> <p>15 A. It is a test report that Julie Pier had</p> <p>16 tested. And the report was sent to Mr. Crouse, so</p> <p>17 I wanted to talk to him about that.</p> <p>18 Q. Were you aware of the report before you</p> <p>19 talked with Mr. Crouse?</p> <p>20 A. Yes.</p> <p>21 Q. And had you seen report prior to</p> <p>22 discussing it with Mr. Crouse?</p> <p>23 A. Yes, I had.</p> <p>24 Q. And the report contained a positive</p> <p>25 finding for tremolite, true?</p>	<p>1 Q. And it was the second hole that was</p> <p>2 drilled?</p> <p>3 A. I believe so.</p> <p>4 Q. So I'm just turning one page over in</p> <p>5 your notes. And it says, "Privileged and</p> <p>6 Confidential: Call with Jyrki"?</p> <p>7 A. Jyrki.</p> <p>8 Q. "Jyrki and Pat."</p> <p>9 A. Yes.</p> <p>10 Q. Who is Jyrki?</p> <p>11 A. Jyrki Bergstrom.</p> <p>12 Q. And what is -- is it</p> <p>13 B-e-r-s-t-r-o-m [sic]?</p> <p>14 A. Yeah. It's listed there under "Guests."</p> <p>15 Q. All right. I see that.</p> <p>16 And who is -- is it a Miss Pier or Mr.?</p> <p>17 A. Mr.</p> <p>18 Q. Mr. Bergstrom. Who is Mr. Bergstrom?</p> <p>19 A. He's a geologist.</p> <p>20 Q. And who does Mr. Bergstrom work for?</p> <p>21 A. He works for Imerys Talc Europe, a</p> <p>22 French company.</p> <p>23 Q. And I want to ask you about</p> <p>24 Mr. Bergstrom, but first, before I do, who is Pat</p> <p>25 you're referring to?</p>

16 (Pages 58 to 61)

Patrick Downey

<p style="text-align: right;">Page 62</p> <p>1 A. That's me. 2 Q. Oh, so it's a call with Jyrki? 3 A. Jyrki. 4 Q. Jyrki. 5 A. I think it'd be unfortunate if your name 6 was "jerky." 7 Q. Yes, it would. It would. "Jyrki" 8 sounds much better. 9 A. Yes. 10 Q. So did you know Mr. Bergstrom prior to 11 this phone call? 12 A. I may have met him a few years ago. I 13 knew of him. 14 Q. And Mr. Bergstrom worked -- works for 15 Imerys Europe? 16 A. Imerys Talc Europe. 17 Q. "Talc Europe." 18 And he is a geologist? 19 A. Yes. 20 Q. And what was -- first, who arranged the 21 telephone call with Mr. Bergstrom? 22 A. Mr. Cary. 23 Q. How long did the call last? 24 A. One hour. 25 Q. Who else was -- if anyone -- was a</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes. Yes. 2 Q. What was your -- before we get to 3 Mr. Bergstrom, let's just complete that. I 4 apologize. 5 What else -- what did you discuss with 6 Mr. Crouse about China? 7 A. About what he knew of sourcing from 8 China. He had visited the mines, so he told me 9 about his visit and what he knew of the geology. 10 Q. And so Mr. Crouse had visited China, the 11 Chinese mines, at least once? 12 A. Yes. 13 Q. And do you know what time period that 14 visit took place? 15 A. In the 2000s. I don't know if it was -- 16 Q. Would it have been early 2000, since he 17 left the company in early -- you said he left the 18 company in early 2000s? 19 A. I don't think I said that. 20 Q. I may have misunderstood. I thought you 21 said he worked in Vermont from late '90s to early 22 2000s. 23 A. He had responsibilities and oversight. 24 And he did a lot of work in Vermont, but in 25 addition, other sites, so I don't -- I don't want</p>
<p style="text-align: right;">Page 63</p> <p>1 participant in the phone call? 2 A. Carolyn Geyser at Alston & Bird, Eric 3 Gardner, an Imerys attorney, Jyrki, Mr. Prost, 4 myself, Sarah O'Donahue, Andrew Cary and Jim 5 Robinson. 6 Q. So this is an accurate list of all the 7 participants on the right-hand side of the page 8 here? 9 A. Yes. 10 Q. Very good. 11 What was the purpose of your call with 12 Mr. Bergstrom? 13 A. To gain information about talc sourcing 14 from China about Guangxi number 2 grade. 15 Q. So China, Guangxi number 2? 16 A. Yes, ma'am. 17 Q. Just 2 or 2A as well? 18 A. 2. I don't know if there's a 19 distinction between 2 and 2A. 20 Q. I've seen in some of the documents it 21 suggested that, but maybe you can explain that to 22 me. 23 Let me just pause right there. You 24 mentioned that you talked with Mr. Crouse, also, 25 about China; did I hear you correctly?</p>	<p style="text-align: right;">Page 65</p> <p>1 to leave the impression that he only worked in 2 Vermont for a period of time. 3 Q. You've never visited the mine in China, 4 true? 5 A. No. 6 Q. Had no involvement in the working 7 relationship between the Chinese mining company and 8 Imerys, true? 9 A. That's true. I have no relationship. 10 Q. And your effort to educate yourself on 11 China involved talking with Mr. Crouse? 12 A. Yes. 13 Q. And then talking with Mr. Bergstrom, 14 true? 15 A. And talking to Julie Pier. 16 Q. Okay. Those three Imerys employees? 17 A. Yes, ma'am. 18 Q. And other your discussions with those 19 three employees and possibly some documents, that's 20 the limit of your knowledge about the sourcing of 21 talcum powder for Johnson & Johnson's talcum-powder 22 products by Imerys? 23 A. Well, we source the ore, not talcum 24 powder, but yes. 25 Q. And my question -- it's a good</p>

17 (Pages 62 to 65)

Patrick Downey

Page 66	Page 68
<p>1 distinction, but my question was very specific. It</p> <p>2 was the sourcing of talc for purposes of Johnson's</p> <p>3 talcum-powder products.</p> <p>4 A. Yes.</p> <p>5 Q. Let me ask my question again.</p> <p>6 Other than your discussions with those three</p> <p>7 employees and the review of documents, that is the</p> <p>8 limit of your knowledge regarding Imerys' supply of</p> <p>9 Chinese talc ore for purposes of</p> <p>10 Johnson & Johnson's talcum-powder products, true?</p> <p>11 A. Generally. I don't -- sitting here</p> <p>12 today, I can't recall if I gained other information</p> <p>13 somehow.</p> <p>14 Q. So the answer to my question is, yes,</p> <p>15 that's the limit of your knowledge?</p> <p>16 A. I believe so.</p> <p>17 Q. Okay. Back to your discussion with</p> <p>18 Mr. Bergstrom.</p> <p>19 That took place last Thursday, just a few</p> <p>20 days ago?</p> <p>21 A. That seems right. Yes.</p> <p>22 Q. And you discussed with Mr. Bergstrom</p> <p>23 specifically Guangxi crude number 2 --</p> <p>24 A. Yes.</p> <p>25 Q. -- that is mined in China?</p>	<p>1 A. The Guilin Guiguang Talc Development</p> <p>2 Company, they are the mine operators who we source</p> <p>3 Guangxi number 2 from.</p> <p>4 Q. And they're the mine operators, but the</p> <p>5 mine itself is owned by the Chinese government,</p> <p>6 true?</p> <p>7 A. I don't know who owns it, unless there's</p> <p>8 document that I reviewed, that I don't recall now,</p> <p>9 that explains the ownership.</p> <p>10 Q. What was your discussion with</p> <p>11 Mr. Bergstrom?</p> <p>12 A. I'm sorry?</p> <p>13 Q. What was your discussion with</p> <p>14 Mr. Bergstrom regarding Guangxi number 2?</p> <p>15 A. The name of the mines, the owners of the</p> <p>16 suppliers, the geology of the deposit, its</p> <p>17 mineralogy, different procedures, how they</p> <p>18 controlled the ore, its supply chain, how it got</p> <p>19 from the mine to the port. Tried to be as</p> <p>20 comprehensive as I could.</p> <p>21 Q. And I've turned the page in Exhibit 5.</p> <p>22 And you'll see it on the screen there.</p> <p>23 Are these notes that you took during your</p> <p>24 call with Mr. Bergstrom?</p> <p>25 A. They are.</p>
Page 67	Page 69
<p>1 A. Yes.</p> <p>2 Q. What mine does that ore come from?</p> <p>3 A. I had to write it down. It's a Chinese</p> <p>4 name.</p> <p>5 Q. Okay.</p> <p>6 A. (Document reviewed.) It comes from a</p> <p>7 single mine called Jizhua, J-i-z-h-u-a, or Jizhua.</p> <p>8 I don't know how to pronounce it.</p> <p>9 Q. Can I see what else you've written on</p> <p>10 your note there?</p> <p>11 So just so we'll have it for the record, you</p> <p>12 can use it during the deposition, but I'm going to</p> <p>13 mark it. This is your notes from your call with</p> <p>14 Mr. Bergstrom?</p> <p>15 A. Yes.</p> <p>16 MS. O'DELL: And I'm marking that as Exhibit</p> <p>17 Number 6.</p> <p>18 (Exhibit 6 was marked for identification.)</p> <p>19 Q. (By Ms. O'Dell) Who is the Guilin</p> <p>20 Guiguang Talc Development Company?</p> <p>21 A. I see you have as much trouble</p> <p>22 pronouncing that as me.</p> <p>23 Q. Yeah. I do my best, but I'm not holding</p> <p>24 myself as an expert in Chinese.</p> <p>25 So who is that company?</p>	<p>1 Q. Who provided you with the typed</p> <p>2 headings?</p> <p>3 A. I made those.</p> <p>4 Q. And are the handwritten notes your own?</p> <p>5 A. Yes, they are.</p> <p>6 Q. And so your notes from your call with</p> <p>7 Mr. Bergstrom would include this page that I'm</p> <p>8 showing at present.</p> <p>9 Are these -- the next page, are those also</p> <p>10 your notes from the conversation with</p> <p>11 Mr. Bergstrom?</p> <p>12 A. Yes.</p> <p>13 Q. And then turn one more page.</p> <p>14 Are those notes from your conversation with</p> <p>15 Mr. Bergstrom as well?</p> <p>16 A. Yes.</p> <p>17 Q. And I'm going to be where -- I'm just</p> <p>18 going to write it at the top. Okay.</p> <p>19 I've highlighted, if you can see it there,</p> <p>20 Mr. Downey, two words that you've written off to</p> <p>21 the side.</p> <p>22 Could you tell us what that says, please?</p> <p>23 A. Dolomite and magnesite.</p> <p>24 Q. Turn here to page 3 of your notes from</p> <p>25 the Bergstrom call, and it says, "YB," and then it</p>

18 (Pages 66 to 69)

Patrick Downey

<p style="text-align: right;">Page 70</p> <p>1 looks to the side you've written out "Geologist, 16</p> <p>2 years experience on talc."</p> <p>3 Is that an individual you're referring to,</p> <p>4 "YB"?</p> <p>5 A. Yes.</p> <p>6 Q. Who are you referring to?</p> <p>7 A. Jyrki. I didn't know how to spell his</p> <p>8 name. I forgot that there was a J at the -- a</p> <p>9 silent J.</p> <p>10 Q. So this is Mr. Bergstrom?</p> <p>11 A. That's Mr. Bergstrom, yes.</p> <p>12 Q. And he works for Imerys Talc America.</p> <p>13 Where is he -- where does he office?</p> <p>14 MR. PROST: This is not true.</p> <p>15 Q. (By Ms. O'Dell) Excuse me. I'm sorry.</p> <p>16 Imerys Talc Europe.</p> <p>17 A. Yes.</p> <p>18 Q. Where does he office?</p> <p>19 A. Somewhere in France.</p> <p>20 Q. And does he have responsibility that</p> <p>21 relates to talc ore that Imerys purchases from</p> <p>22 Chinese mines?</p> <p>23 MR. PROST: Object to form.</p> <p>24 A. He's involved in sourcing external ores.</p> <p>25 Q. (By Ms. O'Dell) That's not my -- really</p>	<p style="text-align: right;">Page 72</p> <p>1 about talc ore that Imerys purchases -- Imerys Talc</p> <p>2 America purchases from the Guangxi -- sorry. I</p> <p>3 should say this. I should be careful -- the Jizhua</p> <p>4 mine in China, true?</p> <p>5 A. The Jizhua? Jizhua? Yes, that mine.</p> <p>6 Q. So you spoke with him about that mine,</p> <p>7 true? When I say "him," I'm referring to</p> <p>8 Mr. Bergstrom.</p> <p>9 A. Yes.</p> <p>10 Q. And you spoke to Mr. Bergstrom for</p> <p>11 purposes of educating yourself about Guangxi</p> <p>12 number 2, which is an ore grade, true?</p> <p>13 A. Yes.</p> <p>14 Q. And my question to you is, in</p> <p>15 Mr. Bergstrom's role as an employee of Imerys Talc</p> <p>16 Europe, does he have responsibility for interacting</p> <p>17 with purchasing, overseeing the Guilin Talc</p> <p>18 Development Company and their mining operation?</p> <p>19 MR. PROST: Object to form.</p> <p>20 A. He makes periodic visits to there to</p> <p>21 assess and monitor their production of Guangxi</p> <p>22 number 2.</p> <p>23 Q. (By Ms. O'Dell) What is Mr. Bergstrom's</p> <p>24 title with Imerys Talc Europe?</p> <p>25 A. I think it's senior geology manager.</p>
<p style="text-align: right;">Page 71</p> <p>1 not my question.</p> <p>2 My question is, does he have any</p> <p>3 responsibility as an Imerys employee for the</p> <p>4 process or the relationship that Imerys has with</p> <p>5 the Chinese mines that they buy talc ore from?</p> <p>6 MR. PROST: Object to form.</p> <p>7 MS. O'DELL: Excuse me. What's the</p> <p>8 objection?</p> <p>9 MR. PROST: Vagueness in terms of</p> <p>10 responsibility in terms of the use of the word</p> <p>11 "Imerys," whether they're referring to Imerys Talc</p> <p>12 America, Inc., or, you know, any company that he</p> <p>13 works for. And there are a couple of other words</p> <p>14 you used at the end of the question that I thought</p> <p>15 were kind of vague, and so I'm not sure that he has</p> <p>16 a foundation to answer those, the way that's</p> <p>17 phrased.</p> <p>18 MS. O'DELL: All right. Well, I'll be happy</p> <p>19 to rephrase it.</p> <p>20 MR. PROST: Sure.</p> <p>21 Q. (By Ms. O'Dell) Mr. Bergstrom is an</p> <p>22 employee of Imerys Europe?</p> <p>23 A. Imerys Talc Europe.</p> <p>24 Q. Imerys Talc Europe. Let me just -- you</p> <p>25 spoke to him for purposes of educating yourself</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Did -- excuse me. Start again.</p> <p>2 You stated that it was Mr. Bergstrom's</p> <p>3 responsibility to periodically visit the mine in</p> <p>4 China.</p> <p>5 Do you have an understanding of how many</p> <p>6 times that Mr. Bergstrom has been to the China</p> <p>7 mine?</p> <p>8 A. Generally, twice a year.</p> <p>9 Q. And for what length of time has he been</p> <p>10 visiting the mine twice a year?</p> <p>11 A. You mean, how long is he on-site during</p> <p>12 a visit?</p> <p>13 Q. No. I mean for what period of time has</p> <p>14 he been visiting the mine on a biannual basis?</p> <p>15 A. I think since 2016.</p> <p>16 Q. So it says in your notes, "has visited</p> <p>17 the Guangxi" -- maybe you mean the -- you mean the</p> <p>18 Jizhua mine. It's not Guangxi mine. It's Jizhua</p> <p>19 mine?</p> <p>20 A. Jizhua mine. Yes.</p> <p>21 Q. J-i-z-h-u-a, mine?</p> <p>22 A. J-i-x --</p> <p>23 Q. I thought it was a Z.</p> <p>24 A. Oh, sorry. Yes. J-i-z-h-u-a.</p> <p>25 Q. It says he's visited two times per year</p>

19 (Pages 70 to 73)

Patrick Downey

<p style="text-align: right;">Page 74</p> <p>1 since 2016. And then below, it says a "minimum of</p> <p>2 1 time per year at least."</p> <p>3 So in some years he only goes once, correct?</p> <p>4 A. Say again?</p> <p>5 Q. Some years he only goes once?</p> <p>6 A. No. He said that he's been there twice</p> <p>7 per year, but the minimum requirement would be at</p> <p>8 least once a year, but he's going there more than</p> <p>9 once a year.</p> <p>10 Q. Next page, were these also notes from</p> <p>11 your discussion with Mr. Bergstrom?</p> <p>12 A. Yes, they are.</p> <p>13 Q. And you entitled the page "Other Chinese</p> <p>14 Mines"; did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. And it says, "Some Chinese mines are</p> <p>17 contaminated with asbestos"?</p> <p>18 A. Yes.</p> <p>19 Q. And think the next bullet says, "Luz,"</p> <p>20 which I'm sure means Luzenac?</p> <p>21 A. Luzenac America.</p> <p>22 Q. And "Imerys has never sourced from</p> <p>23 them"?</p> <p>24 A. Yes.</p> <p>25 Q. What mines are you referring to?</p>	<p style="text-align: right;">Page 76</p> <p>1 with a meeting with counsel?</p> <p>2 A. Yes, they were.</p> <p>3 Q. And when did this meeting take place?</p> <p>4 A. In June or early July. I don't recall.</p> <p>5 MR. PROST: Just to be clear, these notes</p> <p>6 were pertaining to a topic that were later</p> <p>7 determined to go to Julie Pier, just so there's</p> <p>8 clarity in the record as to why he's taking notes</p> <p>9 on Topic 1 on composition, just for the record.</p> <p>10 Q. (By Ms. O'Dell) And this was</p> <p>11 information that you learned, Mr. Downey, during</p> <p>12 that meeting, you made notes of that, correct?</p> <p>13 A. Well, I made notes about the certain</p> <p>14 topics. Other notes in here I had learned before</p> <p>15 this meeting.</p> <p>16 Q. I ask you to turn to the next page of</p> <p>17 Exhibit 5, and it says "Topic 2"?</p> <p>18 A. Mm-hmm.</p> <p>19 Q. And it talks about the "mines that</p> <p>20 supplied."</p> <p>21 And I'm assuming you mean supplied talc for</p> <p>22 Johnson & Johnson products?</p> <p>23 A. Yeah.</p> <p>24 Q. And you list four mines under the mine:</p> <p>25 Hammondsville, Argonaut, Rainbow and Hamm.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I'm aware of reports of Chinese talc</p> <p>2 mines that are contaminated with asbestos, and I</p> <p>3 asked Jyrki what he knew about those.</p> <p>4 Q. Do you recall the names of those mines?</p> <p>5 A. No.</p> <p>6 Q. Did you make a note of that anywhere</p> <p>7 else in these written papers provided?</p> <p>8 A. You mean names of mines?</p> <p>9 Q. Yes.</p> <p>10 A. I didn't get any names of mines.</p> <p>11 Q. Is it your understanding that the only</p> <p>12 mine that has been used to source</p> <p>13 Johnson & Johnson's Baby Powder products is the</p> <p>14 Jizhua mine that you referred to previously?</p> <p>15 A. Yes.</p> <p>16 Q. And turn the page here in your notes.</p> <p>17 And you titled these "OC MDL Prep"?</p> <p>18 A. Yes.</p> <p>19 Q. What does that "OC" stand for?</p> <p>20 A. Ovarian cancer.</p> <p>21 Q. And what were these notes in reference</p> <p>22 to?</p> <p>23 A. These are notes about the notice topics</p> <p>24 that I had been assigned.</p> <p>25 Q. Were these notes made in conjunction</p>	<p style="text-align: right;">Page 77</p> <p>1 It says in parentheses, in relation to</p> <p>2 Hammondsville, "counsel to look for historical</p> <p>3 information"?</p> <p>4 A. Yes.</p> <p>5 Q. Were you provided historical information</p> <p>6 about the Hammondsville Mine?</p> <p>7 A. I don't believe so.</p> <p>8 Q. It says, "Argonaut (info from Marek)"?</p> <p>9 A. Marek. Dave Marek.</p> <p>10 Q. And that's -- and you talked to us about</p> <p>11 a meeting you had with Mr. Marek.</p> <p>12 Did he provide you any written documentation</p> <p>13 regarding Argonaut?</p> <p>14 A. Yes. That's what we discussed.</p> <p>15 Q. You're talking about the geological</p> <p>16 paper?</p> <p>17 A. The geology papers and such, yes.</p> <p>18 Q. In relation to Rainbow, did counsel</p> <p>19 provide you historical information regarding that</p> <p>20 mine?</p> <p>21 A. No. As I recall, I don't think we have</p> <p>22 information on that. I don't know, though.</p> <p>23 Q. And then as it relates to the Hamm Mine,</p> <p>24 H-a-m-m, did counsel provide you historical</p> <p>25 information regarding that mine?</p>

20 (Pages 74 to 77)

Patrick Downey

Page 78	Page 80
<p>1 A. I don't believe so. Wait a minute. I 2 think I saw some -- I briefly reviewed some 3 documents that did have some information on 4 Hammondsville, Rainbow and Hamm in a document I 5 produced yesterday. 6 Q. Was that an internal document from 7 Imerys? 8 A. I believe that's in the production. 9 It's the documents that have been produced. 10 Q. Any other information that you have 11 reviewed regarding the Hammondsville, Rainbow or 12 Hamm mines? 13 A. I'm not sure what you mean "any other 14 documents." 15 Q. You mentioned you reviewed one document 16 regarding those mines. Is that it? 17 A. It was a stack of papers. I don't know 18 if they were all in one document or not. 19 Q. Okay. Regarding the Val Chisone -- 20 A. Sorry. Sometimes I get focused on 21 certain things. I have seen information on the due 22 diligence for some of these mines. 23 Q. And any other information? 24 A. Not that I recall. 25 Q. The Val Chisone Mine you reference in</p>	<p>1 A. Yes. 2 Q. Who provided that information to you? 3 A. Dave Marek. 4 Q. And that's true today, that those 5 core -- drill cores are stored in a shipping 6 container at the Argonaut Mine? 7 A. I believe so. 8 Q. You then refer to "infill." What are 9 you referring to there? 10 A. The development drilling. We call it 11 development drilling, or infill drilling. 12 Q. And the development drilling, just for 13 purposes of the jury, distinguish that from the 14 process of drilling cores for mine exploration. 15 A. It's -- part of the development aspect 16 of mining is once -- the exploration generally 17 defines the limits of the ore body, but you need 18 additional information to more appropriately plan 19 the specific areas that you're going to be mining 20 and the quality as well so that you can estimate, 21 for budgeting purposes and things like that, how 22 much talc is going to be mined, how much overburden 23 needs to be removed. So you need to gather that 24 type of information in advance. And so we do that 25 with infill drilling.</p>
Page 79	Page 81
<p>1 the middle of the page here -- sorry, I should move 2 it up -- that's an Italian mine? Talc mine? 3 A. Yes. 4 Q. And it's owned by Imerys Talc Italy, 5 true? 6 A. That's my understanding, yes. 7 Q. When did Imerys Talc Italy purchase the 8 Val Chisone mine? 9 MR. PROST: I'll object to form, and outside 10 the scope. 11 Q. (By Ms. O'Dell) You may answer. 12 A. I don't know. 13 Q. Do you know the general time period? 14 A. No. 15 Q. If you'll turn, Mr. Downey, to -- a few 16 pages over in your notes, there's a page that 17 begins "Sample retention"; do you see that? 18 A. Yes. 19 Q. And so sample retention talks about 20 core. Does that refer to drill cores? 21 A. Yes, ma'am. 22 Q. And according to your note, the drill 23 cores "are kept in a couple shipping containers 24 stacked in boxes" and it's located at the Argonaut 25 Mine shop; did I read that correctly?</p>	<p>1 Q. And it says, in relation to that, 2 "retains might be held for short periods of time, 3 but plastic bags deteriorate and numbers"? 4 A. Numbers. Sample numbers. 5 Q. "Sample numbers rub off." 6 And then it says, "Stored at." What is 7 that, Stone House Garage? 8 A. Yes. 9 Q. And what's the next word? 10 A. It says, "or Green building." 11 Q. "Green building." 12 And those are both located at the Vermont -- 13 let me ask you. Where are those located? 14 A. Near the Ludlow Mine. 15 Q. Would those be near the Argonaut Mine? 16 A. Or sorry. Argonaut Mine, yes. 17 Q. And there are retains that are currently 18 being stored at Stone House Garage or the green 19 building, true? 20 A. I'm not sure, because the notes indicate 21 that they're only retained for short periods of 22 time, and then exposure to sun and the weather, you 23 know, the bags deteriorate, so -- 24 Q. And did Mr. Marek provide that 25 information to you as well?</p>

21 (Pages 78 to 81)

Patrick Downey

Page 82	Page 84
<p>1 A. That's what he told me. That's -- yeah.</p> <p>2 Q. Did you -- excuse me. Sorry. Were you</p> <p>3 finished?</p> <p>4 A. He provided that -- these are my notes</p> <p>5 that I took of information that he provided.</p> <p>6 Q. Did you ask Mr. Marek if there are</p> <p>7 infill retains currently being stored at one of</p> <p>8 these locations near the Argonaut Mine?</p> <p>9 A. I don't recall if I asked that or not.</p> <p>10 And even if I did ask, I don't recall that he may</p> <p>11 have said.</p> <p>12 Q. What's the next word you put there, the</p> <p>13 next heading?</p> <p>14 A. "Blast holes."</p> <p>15 Q. And when you say, "no retains," are you</p> <p>16 saying that those are not maintained beyond seven</p> <p>17 days?</p> <p>18 A. The seven-day is a turnaround for the</p> <p>19 analyses, yes, prior to. Because it's associated</p> <p>20 with near-term mining activity, we need to have a</p> <p>21 quick turnaround from our lab.</p> <p>22 Q. Do you know what happens to those</p> <p>23 samples after they've been, you know, tested?</p> <p>24 A. They're discarded. I don't know how</p> <p>25 long afterwards, but there's numerous blast holes,</p>	<p>1 Q. So there's not an Argonaut server and a</p> <p>2 Ludlow. It's all one server?</p> <p>3 A. All one.</p> <p>4 Q. Okay. Just a few more items here.</p> <p>5 You have on the next page of your notes,</p> <p>6 "Topic." And I'd like to just ask generally when</p> <p>7 you made, you know, these notes.</p> <p>8 A. I think early July.</p> <p>9 Q. Was it a part of the same in-person</p> <p>10 meeting you had with counsel?</p> <p>11 A. One of them.</p> <p>12 Q. One of them.</p> <p>13 And do you know if it was the first or the</p> <p>14 second meeting?</p> <p>15 A. I don't remember.</p> <p>16 Q. And in terms of documents that might be</p> <p>17 of assistance, who provided the information that</p> <p>18 you list under that category, or that heading?</p> <p>19 A. I think it was a combination of me and</p> <p>20 counsel suggesting different types of documents</p> <p>21 that might be helpful.</p> <p>22 Q. Let me ask you this: Does that say</p> <p>23 "SharePoint"?</p> <p>24 A. Where? I don't know where you're --</p> <p>25 Q. At the bottom. I'm sorry. Excuse me.</p>
Page 83	Page 85
<p>1 and they're discarded.</p> <p>2 Q. Just to make sure I understand, you say</p> <p>3 "records" and "TEM data stored in Julie Pier</p> <p>4 database"; did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And that's -- and who -- and Mr. Marek</p> <p>7 provided that information to you as well, or</p> <p>8 somebody else?</p> <p>9 A. I believe that was from Mr. Marek, yes.</p> <p>10 Q. And it says, "C of A's," which I'm</p> <p>11 assuming means certificate of analyses, "stored at</p> <p>12 Ludlow server," or "on," "at," "on." I'm not sure.</p> <p>13 A. I think it was "at Ludlow server," yes.</p> <p>14 Q. Who provided that information to you?</p> <p>15 A. Mr. Marek.</p> <p>16 Q. And then I skipped this, I'm sorry.</p> <p>17 "Electronic drill logs, assay spreadsheets,</p> <p>18 etc., stored on the local server at site."</p> <p>19 Did Mr. Marek provide that information to</p> <p>20 you?</p> <p>21 A. Yes, he did.</p> <p>22 Q. And what server would Argonaut-related</p> <p>23 drill logs, assay sheets, et cetera, be stored on?</p> <p>24 A. I think he was referencing the Ludlow</p> <p>25 file server.</p>	<p>1 I'm --</p> <p>2 A. Yes.</p> <p>3 Q. That says "SharePoint"?</p> <p>4 A. Yes.</p> <p>5 Q. And that's Houston quality, I'm</p> <p>6 assuming, "procedures"?</p> <p>7 A. Yes. "Houston Q procedures" would</p> <p>8 indicate quality procedures.</p> <p>9 Q. And then good manufacturing practices,</p> <p>10 "GMPs"?</p> <p>11 A. Yes.</p> <p>12 Q. And those are documents that you</p> <p>13 described to us earlier that you found on your own?</p> <p>14 A. I didn't search all of the ones for</p> <p>15 Houston. I grabbed samples, or, you know, typical</p> <p>16 types.</p> <p>17 Q. If you'll just clarify for me,</p> <p>18 Mr. Downey, there are three more pages of notes.</p> <p>19 And just let me ask a general question. They all</p> <p>20 have at -- most of them have "Topics" at the top.</p> <p>21 Are these all notes that you took with -- excuse</p> <p>22 me.</p> <p>23 Were these notes sort of a continuation of</p> <p>24 your notes taken during the meetings with counsel?</p> <p>25 A. Yes, ma'am.</p>

22 (Pages 82 to 85)

Patrick Downey

Page 86	Page 88
<p>1 Q. Let me ask you to look at this note.</p> <p>2 It's on the next-to-the-last page of the exhibit.</p> <p>3 And it says, "Argo blending with Hammondsville."</p> <p>4 Does that indicate that Argonaut talc ore</p> <p>5 was blended with Hammondsville talc ore?</p> <p>6 A. That references part of the J&J supply</p> <p>7 agreement circa 1989 at the time frame that Windsor</p> <p>8 Minerals was purchased by Cyprus, that there was a</p> <p>9 GMP that indicated that Argonaut ore blended with</p> <p>10 Hammondsville was part of their procedure. And it</p> <p>11 was specifically referencing the topic of blending</p> <p>12 that was included in the notice.</p> <p>13 Q. And I've turned to the last page of your</p> <p>14 notes, Exhibit 5. And it has, at the top,</p> <p>15 "Blending Vermont"?</p> <p>16 A. Yes.</p> <p>17 Q. "Hammondsville, Argonaut, Hamm,</p> <p>18 Rainbow"?</p> <p>19 A. Yes.</p> <p>20 Q. Who provided the information on this --</p> <p>21 that's noted here?</p> <p>22 A. I did.</p> <p>23 Q. Who gave the information to you?</p> <p>24 A. Some of it I had seen in documents</p> <p>25 related to other cases.</p>	<p>1 that at the break, please?</p> <p>2 MR. PROST: Sure.</p> <p>3 MS. O'DELL: I'll try to -- for purposes of</p> <p>4 time, we'll move forward, but I need a copy for</p> <p>5 mine.</p> <p>6 Q. (By Ms. O'Dell) So this is a</p> <p>7 conversation of notes, it appears, from</p> <p>8 a conversation with Robin Reilly that you</p> <p>9 referenced earlier?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. And that occurred on August the 3rd?</p> <p>12 A. Yes.</p> <p>13 Q. And that was Friday or Saturday?</p> <p>14 A. Last Friday.</p> <p>15 Q. You note here, Mr. Downey, that you</p> <p>16 talked about -- you mentioned this a little bit</p> <p>17 earlier, and I won't belabor it, but I want to make</p> <p>18 sure I cover this.</p> <p>19 With Miss Pier Reilly, you spoke with her</p> <p>20 about her work at the lab at Ludlow?</p> <p>21 A. Yes.</p> <p>22 Q. And the samples being analyzed and the</p> <p>23 frequency with which they were analyzed, true?</p> <p>24 A. Yes.</p> <p>25 Q. And according to this, y'all had</p>
Page 87	Page 89
<p>1 Q. You refer to "JM." Who does that refer</p> <p>2 to?</p> <p>3 A. John McMeekin.</p> <p>4 Q. Who is John McMeekin?</p> <p>5 A. He's an attorney for Imerys. Well, he's</p> <p>6 not an Imerys attorney, but he --</p> <p>7 THE WITNESS: He's an attorney for them?</p> <p>8 MR. PROST: Outside counsel.</p> <p>9 A. Outside counsel.</p> <p>10 Q. (By Ms. O'Dell) What is the Pipes case?</p> <p>11 A. It's a case in Oklahoma that I gave a</p> <p>12 deposition on a few weeks ago.</p> <p>13 Q. What was the injury that was involved in</p> <p>14 that particular case?</p> <p>15 A. Mesothelioma.</p> <p>16 MS. O'DELL: Give me just a minute.</p> <p>17 (Pause.)</p> <p>18 MS. O'DELL: My colleague has pointed out to</p> <p>19 me some notes from a conversation with Robin</p> <p>20 Reilly, and those were not made a part of my</p> <p>21 exhibit that I was previously given.</p> <p>22 Q. (By Ms. O'Dell) So do you have those</p> <p>23 as . . .</p> <p>24 A. Yes.</p> <p>25 MS. O'DELL: Can I have an extra copy of</p>	<p>1 discussions, as well, about the process float for</p> <p>2 J&J talc, which I'm assuming refers to the West</p> <p>3 Windsor process?</p> <p>4 A. Most -- well, it actually starts,</p> <p>5 actually, at the mine and through crushing. So</p> <p>6 it's -- it does include West Windsor, but it's -- I</p> <p>7 wanted -- I asked her specifically what she knew</p> <p>8 about all of the supply, not just one focused area.</p> <p>9 Q. Fair enough.</p> <p>10 Any other discussions that you had with</p> <p>11 Miss Pier Reilly about -- excuse me, or in</p> <p>12 preparation for your deposition?</p> <p>13 A. Not that I recall, no.</p> <p>14 Q. Other than the Imerys employees we've</p> <p>15 discussed so far -- Mr. Crouse, former employee;</p> <p>16 Mr. Marek, Miss Pier and Miss Pier Reilly -- were</p> <p>17 there any other Imerys employees that you spoke</p> <p>18 with about your testimony here today?</p> <p>19 A. Yes.</p> <p>20 Q. Who?</p> <p>21 A. Hans Bruning.</p> <p>22 Q. What's -- how do you spell Mr. Bruning's</p> <p>23 last name?</p> <p>24 A. B-r-u-n-i-n-g.</p> <p>25 Q. And who's Mr. Bruning?</p>

23 (Pages 86 to 89)

Patrick Downey

Page 90	Page 92
<p>1 A. He's a geologist at Vermont currently.</p> <p>2 Q. And what was the purpose of your</p> <p>3 discussion with Mr. Bruning?</p> <p>4 A. I wanted to discuss the geology of the</p> <p>5 deposit and the mine planning and ore-control</p> <p>6 aspects of --</p> <p>7 Q. Excuse me.</p> <p>8 A. -- mine planning and ore-control</p> <p>9 aspects.</p> <p>10 Q. Of which mines?</p> <p>11 A. Of Argonaut.</p> <p>12 Q. Did you speak with Mr. Browning [sic]</p> <p>13 about --</p> <p>14 A. Bruning.</p> <p>15 Q. Bruning. Sorry. I can't read my --</p> <p>16 Bruning.</p> <p>17 -- about any other mines besides Argonaut?</p> <p>18 A. I don't believe I did, no.</p> <p>19 Q. Did you speak with Mr. Bruning about any</p> <p>20 other topics related to your deposition here today</p> <p>21 other than --</p> <p>22 A. What do you mean?</p> <p>23 Q. -- geology and mine planning of</p> <p>24 Argonaut?</p> <p>25 A. Talked about his kids.</p>	<p>1 -- to prepare for your deposition today?</p> <p>2 A. Yes.</p> <p>3 Q. How long was that meeting?</p> <p>4 A. About an hour.</p> <p>5 Q. Where did you meet in Vermont?</p> <p>6 A. At the Ludlow Mill and Argonaut Mine.</p> <p>7 Q. You mentioned that Mr. Bruning is a</p> <p>8 geologist.</p> <p>9 What's his position with Imerys?</p> <p>10 A. I don't know the name of his title, but</p> <p>11 he does geology and mine planning for our mines.</p> <p>12 Q. In Vermont?</p> <p>13 A. In Vermont and elsewhere.</p> <p>14 Q. And elsewhere.</p> <p>15 What's Mr. Bruning's first name?</p> <p>16 A. Hans.</p> <p>17 Q. Hans.</p> <p>18 Is he an employee of Imerys Talc America?</p> <p>19 A. I believe so.</p> <p>20 Q. Is he also an employee of Imerys -- any</p> <p>21 other entity of Imerys?</p> <p>22 A. No, I don't think so.</p> <p>23 Q. Does Mr. Bruning have oversight or</p> <p>24 supervisory responsibility over the mining</p> <p>25 operations at Argonaut presently?</p>
Page 91	Page 93
<p>1 Q. Do you and Mr. Bruning office in the</p> <p>2 same building?</p> <p>3 A. No. My office is in Montana.</p> <p>4 Q. I thought you said he was in Montana.</p> <p>5 A. No, no, no. In Vermont.</p> <p>6 Q. In Vermont, okay.</p> <p>7 So Mr. Bruning is in Vermont?</p> <p>8 A. Yes.</p> <p>9 Q. Had you known Mr. Bruning prior to your</p> <p>10 call?</p> <p>11 A. Yes.</p> <p>12 Q. And did you initiate that call?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Was there anyone else that participated</p> <p>15 on the call either in person or on the phone?</p> <p>16 A. No. And it wasn't a call. It was a</p> <p>17 visit in person.</p> <p>18 Q. Where did that meeting take place?</p> <p>19 A. In Vermont.</p> <p>20 Q. When did it take place?</p> <p>21 A. Early June.</p> <p>22 Q. And was the purpose of your meeting with</p> <p>23 Mr. Browning to --</p> <p>24 A. Bruning.</p> <p>25 Q. Excuse me. Bruning.</p>	<p>1 A. Presently, yes, but he was not employed</p> <p>2 during the time frame that we were supplying</p> <p>3 product to Johnson & Johnson from Vermont.</p> <p>4 Q. Did you travel to Vermont specifically</p> <p>5 to meet with Mr. Bruning?</p> <p>6 A. No. I was there on other business.</p> <p>7 Q. Did it relate to issues regarding talcum</p> <p>8 powder -- excuse me.</p> <p>9 Did your visit relate to any aspect of</p> <p>10 litigation?</p> <p>11 A. Say again? The primary purpose of the</p> <p>12 specific visit?</p> <p>13 Q. Yeah.</p> <p>14 A. No.</p> <p>15 Q. Let me just ask you again. I'm sorry.</p> <p>16 What was the purpose of your -- primary</p> <p>17 purpose of your visit to Vermont?</p> <p>18 A. A project review of a processing project</p> <p>19 at the Ludlow Mill.</p> <p>20 Q. And that's a project you mentioned to us</p> <p>21 earlier?</p> <p>22 A. Yes.</p> <p>23 Q. You mentioned earlier, Mr. Downey, that</p> <p>24 you met with counsel twice before your call with</p> <p>25 Julie Pier on July 27th, if my memory's correct,</p>

24 (Pages 90 to 93)

Patrick Downey

Page 94	Page 96
<p>1 and --</p> <p>2 A. I believe I met with counsel about four</p> <p>3 times. And I think we met twice before then. I</p> <p>4 didn't record -- I don't remember the dates of the</p> <p>5 meetings.</p> <p>6 Q. You believe you had approximately four</p> <p>7 meetings with counsel in preparation for your</p> <p>8 deposition here today?</p> <p>9 A. I think so, yeah.</p> <p>10 Q. And it's your memory, your best</p> <p>11 recollection, two of those occurred before your</p> <p>12 call with Julie Pier, and I'm assuming two occurred</p> <p>13 after the call, thereabouts?</p> <p>14 A. I think -- I think so, yeah.</p> <p>15 Q. Do you have a sense of how long each of</p> <p>16 those meetings were after your call with Julie</p> <p>17 Pier?</p> <p>18 A. Generally, the times that I met in</p> <p>19 person with counsel, we met for about a day and a</p> <p>20 half.</p> <p>21 Q. So just to summarize, you had</p> <p>22 approximately four meetings with counsel, and each</p> <p>23 of those meetings lasted about a day and a half,</p> <p>24 fair?</p> <p>25 A. Fair.</p>	<p>1 misspelled talc. Sorry. I left a "c" off.</p> <p>2 A. I was wondering who was going to catch</p> <p>3 that.</p> <p>4 Q. Yeah, yeah. I'd look back periodically.</p> <p>5 I'm just trying to write so neatly. It's hard.</p> <p>6 I'm feeling some pressure. Imerys --</p> <p>7 A. Your handwriting is better than mine. I</p> <p>8 appreciate that.</p> <p>9 Q. So Imerys -- and I'm just going to say</p> <p>10 "Imerys" in short for Imerys Talc America in the</p> <p>11 parenthetical, is that okay with you? Because it</p> <p>12 takes a long time.</p> <p>13 A. Okay. "Luzenac America" is on your</p> <p>14 first statement there.</p> <p>15 Q. So I should put "America" right here?</p> <p>16 A. Yes.</p> <p>17 Q. And "Imerys Talc America." I'm just</p> <p>18 going to go ahead, since I've done that much, "RTM</p> <p>19 & Luzenac America was/is responsible for ensuring</p> <p>20 that the talc sold to J&J was" -- since they're</p> <p>21 currently selling it -- "is asbestos free"; can we</p> <p>22 agree on that?</p> <p>23 MR. PROST: Object to form.</p> <p>24 A. We test our product to ensure that it</p> <p>25 doesn't contain measurable asbestos, and that's</p>
Page 95	Page 97
<p>1 Q. In terms of going forward in the</p> <p>2 deposition, Mr. Downey, a couple things I want to</p> <p>3 see if we can just agree on, okay? We agreed on a</p> <p>4 few things so far. Let's see if there are a few</p> <p>5 other things we can agree on.</p> <p>6 First thing is that asbestos is a</p> <p>7 carcinogen. Can you and I agree on that?</p> <p>8 A. Yeah. I agree that I think it's</p> <p>9 well-known that asbestos can cause some types of</p> <p>10 cancer.</p> <p>11 Q. So is that fair? Asbestos is a</p> <p>12 carcinogen?</p> <p>13 A. It can cause some types of cancer, yes.</p> <p>14 Q. Which is a fair definition of a</p> <p>15 carcinogen?</p> <p>16 A. Sure.</p> <p>17 Q. It causes cancer, or can cause cancer in</p> <p>18 humans?</p> <p>19 A. Yes.</p> <p>20 Q. Can we agree that Imerys Talc America --</p> <p>21 and I'm going to put in parentheses "RTM," Rio</p> <p>22 Tinto -- and Luzenac had a no-asbestos policy for</p> <p>23 talc supplied to J&J; can we agree on that?</p> <p>24 A. Yes.</p> <p>25 Q. Can we agree that Imerys -- oops. I</p>	<p>1 what I can agree to.</p> <p>2 Q. (By Ms. O'Dell) So we can't agree that</p> <p>3 it's "free," so I'm going to cross that out.</p> <p>4 But --</p> <p>5 A. I can't -- you're going to need to move</p> <p>6 it because I can't see that area.</p> <p>7 Q. Thank you. So do you see that now?</p> <p>8 So you cannot agree that Imerys Talc America</p> <p>9 is responsible for ensuring that talc sold to J&J</p> <p>10 was/is asbestos free, but you'll agree that it</p> <p>11 was -- asbestos was "below detectible limits"?</p> <p>12 MR. PROST: Object to form.</p> <p>13 Q. (By Ms. O'Dell) Is that -- can we agree</p> <p>14 on that?</p> <p>15 A. Generally speaking, I would agree.</p> <p>16 Q. Okay. "Imerys Talc America does ensure</p> <p>17 that talc is asbestos free" --</p> <p>18 MR. PROST: Object to form; misstates</p> <p>19 testimony.</p> <p>20 Q. (By Ms. O'Dell) -- is that fair?</p> <p>21 Because you wouldn't agree it's not -- you won't</p> <p>22 agree it's asbestos free.</p> <p>23 You agree that it's below detectible limits,</p> <p>24 true?</p> <p>25 MR. PROST: Same objection.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 A. Our talc -- we have a rigorous testing 2 program that also includes not only the testing 3 itself, but our knowledge of the ore deposits and 4 the testing that -- and sampling and mapping that 5 we do continually through the process, we are 6 confident that our products are safe, but in terms 7 of a detection limit, I'm not the expert on that. 8 Julie Pier can speak to that. 9 But the scientific instruments are not 10 available to tell us that our product is, 11 quote-unquote, asbestos free. We can't say that in 12 this room, that the air in this room is asbestos 13 free and we've been, you know, in this room 14 together for a few hours and, you know, even say 15 that the air in this room asbestos free. So I 16 can't really agree with the way that you've written 17 that. 18 Q. Okay. Let me say this: "Imerys does 19 not certify that talc sold to J&J is asbestos 20 free" -- 21 MR. PROST: Object to form. 22 Q. (By Ms. O'Dell) -- is that fair, based 23 on your testimony? 24 A. We have a rigorous testing program where 25 we test our product. We exceed all government</p>	<p style="text-align: right;">Page 100</p> <p>1 asbestos free, true? 2 MR. PROST: Object to form. This is 3 repetitive questioning three or four times now. 4 And he's answered it the best that he can. 5 MS. O'DELL: He has not answered my 6 question. It's a true-or-false question. It's a 7 fair question. 8 Q. (By Ms. O'Dell) If you think it's 9 false, tell me how it's false, but I think what 10 I've done is summarized your previous testimony. 11 Imerys does not certify that talc sold to 12 J&J is asbestos free, true or false? 13 MR. PROST: Object to form. He's told you 14 he can't say just "true" or "false." He's answered 15 the best that he can. You've asked it five times. 16 He's -- the same way. He says he can't answer just 17 "true" or "false." 18 MS. O'DELL: To be fair, don't coach the 19 witness. It's a true-or-false question. It's very 20 clear. 21 Q. (By Ms. O'Dell) And I'm asking, is that 22 a true or false statement, Mr. Downey? 23 MR. PROST: Object to form. My 24 understanding of the deposition guidelines are to 25 avoid repetitive questions. You've now asked the</p>
<p style="text-align: right;">Page 99</p> <p>1 regulatory requirements for the safety of our 2 product. And we believe in that strongly. But in 3 terms of the characterization of, quote-unquote, 4 asbestos free, as I said before, we cannot make 5 that statement. Nobody can make that statement, 6 the same as nobody can guarantee that the air that 7 we are breathing in this room is, quote-unquote, 8 asbestos free. 9 Q. So Imerys -- it's a true statement to 10 say Imerys does not certify that talc sold to J&J 11 is asbestos free, true? 12 MR. PROST: Object to form. 13 A. I don't think you can answer that as a 14 true-or-false question. You need to understand the 15 testing methodologies, the regulatory environment 16 and all that. I can't agree to try to answer that 17 as a true-false question. 18 MS. O'DELL: Move to strike as 19 nonresponsive. 20 Q. (By Ms. O'Dell) That's a true -- that's 21 either true, Mr. Downey, or it's not true. 22 MR. PROST: Object -- 23 Q. (By Ms. O'Dell) Imerys can't -- you've 24 testified, and I can read it back to you, that 25 Imerys cannot certify that talc sold to J&J is</p>	<p style="text-align: right;">Page 101</p> <p>1 same exact question five times, which he has told 2 you he can't answer just "true" or "false." He's 3 answered the best way that he can. I'm not 4 coaching him. I'm just stating what's on the 5 record here and what's happened. 6 MS. O'DELL: It's a fair question. What the 7 deposition protocol says is, one, you can't coach 8 the witness. Number two, there can't be objections 9 that are lengthy. To be fair, I think that's maybe 10 where you are. 11 But he just said in the last few minutes, 12 nobody can certify that talc is asbestos free. 13 Q. (By Ms. O'Dell) You've said that, 14 right? 15 MR. PROST: Object to form. 16 Q. (By Ms. O'Dell) You said -- you said 17 you can't certify that talc is asbestos free 18 because you don't know if this room doesn't have 19 asbestos in it, fair? 20 MR. PROST: Object to form. 21 A. Again, our products meet the highest 22 safety standards. They exceed the regulatory 23 requirements -- 24 Q. (By Ms. O'Dell) Let me stop you right 25 there. Let me stop you right there.</p>

Patrick Downey

<p style="text-align: right;">Page 102</p> <p>1 I'm not asking you about your testing 2 protocol. Miss Pier's going to talk about that. 3 I'm asking you about -- I'm not asking you about 4 the regulatory framework. 5 I'm asking you, does Imerys certify that 6 talc sold to J&J is asbestos free? That's the 7 question. I asked that a few minutes ago. I 8 understood your answer to be, no, Imerys does not 9 certify that. 10 MR. PROST: Object to form. That misstates 11 what he said. You're not liking what he's saying, 12 but he's given you the answer to the question. 13 Object to form. 14 Q. (By Ms. O'Dell) Is that what you said, 15 Mr. Downey? 16 A. We certify that our talc does not 17 contain measurable asbestos. And your question 18 needs to be understood in the context of both the 19 scientific limits of detectability, to which Julie 20 Pier will speak to, but also the regulatory 21 requirements. 22 Q. So it's your testimony that Imerys 23 certifies to J&J that in the talc sold to J&J for 24 talcum-powder products, asbestos is below the 25 detectable limit, fair?</p>	<p style="text-align: right;">Page 104</p> <p>1 I wrote, "Below detectible limit does not 2 equal asbestos free," you said it depends? 3 A. Yes. 4 Q. Okay. Let me try one more time. 5 "Imerys cannot make the statement that talc 6 sold to J&J is asbestos free." 7 MR. PROST: Objection; form, outside the 8 scope, asked and answered maybe ten times now. 9 Q. (By Ms. O'Dell) You agree with that, 10 don't you? 11 MR. PROST: Same objections. 12 A. Is there a way to expand it so I can 13 read it? 14 Q. (By Ms. O'Dell) I'll try. 15 A. Now I'm getting dizzy. 16 Q. It's very sensitive. Sorry. 17 Can you see that? Can you see that, sir? 18 A. Yes, I can. Sorry. 19 Q. Agree? Do you agree with that 20 statement? 21 MR. PROST: Same objections; asked and 22 answered multiple times. 23 A. In the context of the limitations of the 24 scientific instruments, generally I would agree 25 with that.</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. PROST: Object to form. 2 A. Again, providing the context that I've 3 previously repeated, yes. 4 Q. (By Ms. O'Dell) And "below detectible 5 limits" does not equal asbestos free. 6 MR. PROST: Object to form. 7 Q. (By Ms. O'Dell) True? 8 MR. PROST: And outside the scope. 9 A. That depends. 10 Q. (By Ms. O'Dell) True? 11 A. No, that depends. 12 Q. It can be true? 13 MR. PROST: Same objections; asked and 14 answered. 15 A. It depends. 16 Q. It can be true? 17 MR. PROST: Same objections; asked and 18 answered. 19 A. It depends. 20 Q. (By Ms. O'Dell) All right. You say it 21 depends. Okay. I'll put that right there, all 22 right? 23 A. I can't see it. 24 Q. Oh, sorry. I'm running out of room 25 here. You say that depends.</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. SILVER: Leigh, if it's a good time, 2 it's been almost 90 minutes, let's see if we can 3 take a break, see if lunch is here. 4 MS. O'DELL: Give me just one minute. I'm 5 just going to mark this exhibit, Exhibit 7, our 6 notes here, and we're on the Elmo. 7 (Exhibit 7 was marked for identification.) 8 MS. O'DELL: We can go. We can take a break 9 now. 10 VIDEOGRAPHER: Going off the record at 11 12:19. 12 (Recess taken.) 13 VIDEOGRAPHER: We are back on the record at 14 1:10. 15 Q. (By Ms. O'Dell) Mr. Downey, would you 16 agree with me that baby powder in Shower-to-Shower 17 talc products do not have any therapeutic benefit? 18 MR. PROST: Object to form. 19 A. You're asking a health question. I 20 don't know what you mean by "therapeutic," but to 21 the extent that they could prevent rash and 22 infection, if that's therapeutic, I suppose so. 23 Q. (By Ms. O'Dell) Is it your 24 understanding that talc-powder products can prevent 25 infection?</p>

27 (Pages 102 to 105)

Patrick Downey

Page 106	Page 108
<p>1 A. I'm sorry?</p> <p>2 Q. Is it your understanding that</p> <p>3 talcum-powder products can prevent infection?</p> <p>4 A. I don't think that's what I said.</p> <p>5 MR. LOCKE: Objection; beyond the scope.</p> <p>6 Q. (By Ms. O'Dell) I thought that's what</p> <p>7 you said, but . . .</p> <p>8 You said, "You're asking a health question.</p> <p>9 I don't know what you mean by that, but to the</p> <p>10 extent that that could prevent infection, it's</p> <p>11 therapeutic."</p> <p>12 I'm saying, is it your understanding that</p> <p>13 talcum-powder products prevent infection?</p> <p>14 MR. PROST: Object to form.</p> <p>15 MR. LOCKE: Same objection.</p> <p>16 A. I thought that I said that to the extent</p> <p>17 it could prevent chaffing and, therefore, an</p> <p>18 infection. That's what I meant.</p> <p>19 Q. (By Ms. O'Dell) That's what you meant,</p> <p>20 okay.</p> <p>21 So in your mind, that would be a therapeutic</p> <p>22 benefit?</p> <p>23 MR. PROST: Same objection.</p> <p>24 A. It could be. Again, I'm not a health</p> <p>25 professional.</p>	<p>1 A. It does not look familiar, no.</p> <p>2 Q. All right. This was a document prepared</p> <p>3 by Rio Tinto Minerals for IMA.</p> <p>4 Are you familiar with IMA?</p> <p>5 A. I am familiar with an IMA.</p> <p>6 Q. And which IMA are you familiar with?</p> <p>7 A. Industrial Minerals Association.</p> <p>8 Q. Right. And so -- and it was prepared by</p> <p>9 Ed McCarthy, Julie Pier and Erik Ronald; do you see</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. And we talked about Miss Pier being an</p> <p>13 employee of Imerys.</p> <p>14 Are you aware that Ed McCarthy is an</p> <p>15 employee of Imerys?</p> <p>16 A. He's a former employee. He retired.</p> <p>17 Q. Do you know when Mr. McCarthy retired?</p> <p>18 A. About a year and a half ago.</p> <p>19 Q. And do you know Erik Ronald?</p> <p>20 A. I knew him, yes.</p> <p>21 Q. And who is Mr. Ronald?</p> <p>22 A. He was a geologist with the company.</p> <p>23 Q. So these are three current or former</p> <p>24 Imerys employees that prepared this summary for the</p> <p>25 international minerals association in October of</p>
Page 107	Page 109
<p>1 Q. (By Ms. O'Dell) Let me show you what</p> <p>2 I've marked, Mr. Downey, as Exhibit Number 8.</p> <p>3 (Exhibit 8 was marked for identification.)</p> <p>4 Q. (By Ms. O'Dell) Have you seen this</p> <p>5 document before?</p> <p>6 A. (Document reviewed.)</p> <p>7 MR. SILVER: Leigh, the copies that you</p> <p>8 handed out have no Bates number. Is there a Bates</p> <p>9 number on the document?</p> <p>10 MS. O'DELL: There is. Sorry.</p> <p>11 MR. SILVER: Then could I just -- going</p> <p>12 forward, if we could just read Bates numbers into</p> <p>13 the record, it makes it easier when we have just</p> <p>14 the --</p> <p>15 MS. O'DELL: That's fair, because I've got</p> <p>16 probably a handful that, when they copied, they</p> <p>17 didn't have -- they didn't copy with a Bates. And</p> <p>18 my -- I'll try to point that out. I didn't realize</p> <p>19 those were some of them.</p> <p>20 MR. SILVER: That's fine.</p> <p>21 Q. (By Ms. O'Dell) But this -- I've marked</p> <p>22 it as Exhibit 8. It's a document that has the</p> <p>23 Bates number IMERYYS 050651.</p> <p>24 Have you seen this document before,</p> <p>25 Mr. Downey?</p>	<p>1 2009?</p> <p>2 A. For the who?</p> <p>3 Q. International minerals association.</p> <p>4 A. No.</p> <p>5 Q. Was it --</p> <p>6 A. Industrial Minerals Association.</p> <p>7 Q. Excuse me. Sorry.</p> <p>8 Can I say "IMA" for short?</p> <p>9 A. You bet.</p> <p>10 Q. Okay. I'll say that again.</p> <p>11 Edward McCarthy, Julie Pier and Erik Ronald</p> <p>12 were Imerys employees who prepared this summary</p> <p>13 regarding talc for IMA, and it's dated</p> <p>14 October 2009?</p> <p>15 A. Yes.</p> <p>16 Q. And you'll notice there is -- should be</p> <p>17 a Bates number, IMERYYS 050651, indicating that this</p> <p>18 came from documents produced by Imerys in this</p> <p>19 litigation.</p> <p>20 A. The copy I have does not have any Bates</p> <p>21 references on it.</p> <p>22 Q. I'll represent that that's the case,</p> <p>23 Mr. Downey.</p> <p>24 I want to ask you a couple of questions</p> <p>25 about this document, because it goes over some of</p>

28 (Pages 106 to 109)

Patrick Downey

Page 110	Page 112
<p>1 the general geology of the mines in Vermont and 2 also in China. And I apologize, again, for giving 3 you a copy without the Bates number, and so we're 4 going to have to work our way through this by 5 counting pages. 6 A. Okay. 7 Q. And I apologize. 8 So if you will turn, I think it's 14 pages 9 over -- 10 A. Including the title page? 11 Q. Yes, including that. 12 So 14 pages, you'll see at the bottom of the 13 page -- I'm going to reference, Mr. Downey, a 14 heading with "Vermont"; do you see that? Do you 15 see that? 16 A. Oh, okay. Yeah. 17 Q. Okay. And so, of course, we've been 18 talking about Vermont a good deal already today 19 because that's where Imerys, in part, sourced talc 20 for J&J. 21 And Mr. McCarthy and others write here that 22 Vermont has produced talc for over 100 years. I'm 23 not going to read all this, but just to give you a 24 little connection. It goes on to say, "Powder 25 production began in Johnson in 1902. And at one</p>	<p>1 easier, ultramafic? 2 A. Ultramafic. 3 Q. "Ultramafic rocks of Precambrian age 4 first into serpentine and then to talc and 5 magnesium carbonate by reaction with carbon 6 dioxide." 7 Is that consistent with your understanding 8 of how talc was formed in the location where the 9 Vermont mines are located? 10 A. No. 11 Q. Okay. How is your understanding 12 different? 13 A. That the source rock was dunite, not 14 peridotite. 15 Q. Would you agree it's ultramafic rock? 16 A. Yes. That's a very broad description. 17 Q. Okay. So you agree it's ultramafic 18 rock. You just don't agree it's peridotite -- how 19 do you say that? Perry dot -- 20 A. Peridotite. 21 Q. Peridotite. Thank you. 22 You don't agree with that. You say it's 23 made out of what kind of rock? 24 A. Dunite. 25 Q. Okay. How do you spell dunite?</p>
Page 111	Page 113
<p>1 time some seven mines were active in the state, but 2 production has now been limited to one mine, the 3 Argonaut"; do you see that? 4 A. Yes. 5 Q. And that's consistent with your 6 understanding of mining operations owned by Imerys 7 in Vermont, true? 8 A. Yes. I just want to make sure I'm aware 9 of the time line on things. 10 Q. Okay. And in talking about the talc 11 deposits -- or I should say "deposit" -- in Vermont 12 where the Hamm Mine, the Hammondsville Mine, the 13 Rainbow Mine, Argonaut that we've talked a lot 14 about, those mines are located essentially in the 15 same geologic formation that contains talc, true? 16 A. Generally speaking, that's my 17 understanding. 18 Q. And according to Mr. McCarthy and 19 Miss Pier, talc in Vermont was formed from the 20 alteration of peridotite -- how would you say that? 21 A. That looks like a typo. 22 Q. What would you -- what do you think it 23 should say? 24 A. They might mean peridotite. 25 Q. Peridotite or, to make it a little bit</p>	<p>1 A. D-u-n-i-t-e. 2 Q. But you agree that it's first serpentine 3 and then it morphs into a talc and magnesium 4 carbonate in certain portions of the geologic 5 formation, true? 6 A. Generally speaking, I'd say that's 7 correct, but I think the description of the geology 8 deposit by Crouse is much more informed. 9 Q. And what description are you talking 10 about? Should I make a telephone call with 11 Mr. Crouse? 12 A. The phone call as well as what he 13 described in the depositions that I reviewed. He 14 gave two depositions. 15 Q. And you think those are more informed 16 than Mr. McCarthy, Miss Pier and Mr. Ronald? 17 A. Yes, I do. 18 Q. And you based that just on reviewing his 19 depositions? You think that's a more correct 20 summation of the geology? 21 A. Well, in part, Mr. McCarthy's not a 22 geologist; he's a chemical engineer, Ph.D. 23 Q. Mr. Ronald's a geologist? 24 A. Yes. 25 Q. And Miss Pier, you held her out to be an</p>

29 (Pages 110 to 113)

Patrick Downey

Page 114	Page 116
<p>1 expert in matters related to talc, true?</p> <p>2 MR. PROST: Object to form.</p> <p>3 A. Specifically, I think that she's a</p> <p>4 mineralogist.</p> <p>5 Q. (By Ms. O'Dell) She's a mineralogist?</p> <p>6 A. I believe that's her training.</p> <p>7 Q. Goes on to say, "The outside of the</p> <p>8 deposit will usually have a thin blackwall</p> <p>9 containing a biotite-chlorite schist in contact</p> <p>10 with the surrounding host" -- problem --</p> <p>11 "peridotite"?</p> <p>12 A. There you go.</p> <p>13 Q. I can't say it. It's close. Better.</p> <p>14 "Subsequent shearing has complicated the</p> <p>15 structures and created zones of highgrade platy</p> <p>16 talc. Grades typically run 45 to 57 percent talc,</p> <p>17 with magnesite, chlorite, serpentine, quartz and</p> <p>18 mica being the major impurities."</p> <p>19 That's consistent with your understanding of</p> <p>20 Vermont deposits, true?</p> <p>21 A. Again, the surrounding host wasn't</p> <p>22 peridotite. And I think that the geologic</p> <p>23 description by Mr. Crouse is correct.</p> <p>24 Q. Mr. Crouse hasn't published that</p> <p>25 geologic description, true?</p>	<p>1 subsection that's entitle "China"; do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And this describes, generally -- and</p> <p>4 we're going to go into this in some more detail,</p> <p>5 but trying to get some kind of background here for</p> <p>6 the jury.</p> <p>7 Is it says, "China has some 120 working talc</p> <p>8 mines located in three provinces, Liaoning and</p> <p>9 Shangdong in the North and Guangxi in the south."</p> <p>10 And we talked about Guangxi being the source</p> <p>11 of Johnson & Johnson talc, true?</p> <p>12 A. Guangxi number 2 is the grade that we</p> <p>13 use for Johnson & Johnson product, yes.</p> <p>14 Q. And they're talking about -- that's --</p> <p>15 Guangxi is the name of the province; is that your</p> <p>16 understanding?</p> <p>17 A. I forget how the name is derived.</p> <p>18 Q. All right. It says, "Almost all the</p> <p>19 talc," referring to China, "is of the</p> <p>20 metasedimentary origin and much of it, especially</p> <p>21 in Liaoning and Guangxi, is high purity and high</p> <p>22 brightness."</p> <p>23 Is that consistent with your understanding</p> <p>24 of the talc deposits in China?</p> <p>25 A. I believe metasedimentary is correct,</p>
Page 115	Page 117
<p>1 A. I'm not sure.</p> <p>2 Q. And you see no Imerys production</p> <p>3 documents, as you refer to them, where Mr. Crouse</p> <p>4 has delineated his thoughts on the geologic</p> <p>5 formations, true?</p> <p>6 MR. PROST: Object to form.</p> <p>7 A. There might be. I can't recall right</p> <p>8 now.</p> <p>9 Q. (By Ms. O'Dell) But you're not -- you</p> <p>10 can't tell me if there are, true?</p> <p>11 A. I think there are, but right now, I</p> <p>12 can't -- I've reviewed numerous documents.</p> <p>13 Q. And you know, Mr. Downey -- or you may</p> <p>14 not know -- that you reviewed depositions that are</p> <p>15 not a part of this case and, I'm assuming, subject</p> <p>16 to a protective or confidentiality order?</p> <p>17 MR. PROST: Object to form.</p> <p>18 A. I don't know.</p> <p>19 Q. (By Ms. O'Dell) Let me ask you to turn</p> <p>20 probably four or five pages over? Yeah, five pages</p> <p>21 over. Do you see a section on China?</p> <p>22 A. Before or after? Which way are we</p> <p>23 turning?</p> <p>24 Q. A little farther into the document, so</p> <p>25 five pages further into the document, you'll see a</p>	<p>1 and certainly Guangxi is high purity and high</p> <p>2 bright. I can't speak for Liaoning.</p> <p>3 Q. And turn it over to the next page, the</p> <p>4 document, and you'll look about midway down, the</p> <p>5 paragraph beginning "The talc veins"; do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. And it's talking about Chinese ore</p> <p>9 deposits, it's chlorite, dolomite, magnesite and</p> <p>10 quartz are the main contaminants contained in those</p> <p>11 deposits.</p> <p>12 Is that consistent with your understanding?</p> <p>13 A. Well, this is a section of a document --</p> <p>14 I can see what it says, and I'm not sure what</p> <p>15 they're referencing to. I can't tell what deposits</p> <p>16 they're talking about, but that's what it says</p> <p>17 here.</p> <p>18 I might also add that this appears to be a</p> <p>19 document that's in some form of draft and review,</p> <p>20 so I don't know that it's the finished product.</p> <p>21 Q. What's your understanding of the</p> <p>22 impurities or contaminants contained in the Chinese</p> <p>23 ore deposits where Imerys buys talc for J&J?</p> <p>24 MR. PROST: Object to form.</p> <p>25 A. Generally speaking, it's for the Guangxi</p>

30 (Pages 114 to 117)

Patrick Downey

Page 118	Page 120
<p>1 number 2. It's my understanding that the other 2 minerals present include chlorite, dolomite, I'm 3 not sure about magnesite, and a trace of quartz, I 4 believe. I can't tell from this document whether 5 it's the ore prior to selective mining or things 6 like that. It might be the -- the in placement. I 7 can't tell, either.</p> <p>8 Q. Is dunite a type of peridotite?</p> <p>9 A. Let me think. I'd have to refer to my 10 notes from Crouse and see if I can refresh my 11 memory. (Document reviewed.)</p> <p>12 Q. If you don't know, Mr. Downey, just tell 13 me you don't know, but if you -- I'll give you a 14 minute to look at your notes.</p> <p>15 A. (Document reviewed.) My notes indicate 16 that the talc mines we're talking about in southern 17 Vermont form from pure dunitic serpentinite. They 18 were derived from dunite. Elsewhere --</p> <p>19 Q. Sir, I'm asking about China, not 20 Vermont.</p> <p>21 A. Right. Oh, I'm sorry. I lost your 22 question.</p> <p>23 Q. Okay.</p> <p>24 A. Your question was about peridotite, 25 wasn't it?</p>	<p>1 that sold or supplied talc for use in 2 Johnson & Johnson products.</p> <p>3 And so I'm going to hand you what I've 4 marked as Exhibit Number 9. 5 (Exhibit 9 was marked for identification.)</p> <p>6 Q. (By Ms. O'Dell) And I promise, there 7 are only a few of these, but this is the second one 8 where the Bates didn't print, and rather than kill 9 another ream of paper, we have -- I've just put, 10 with the help of my colleague, put stickies on the 11 pages where we're going to be having a discussion.</p> <p>12 Have you -- it's --</p> <p>13 MR. SILVER: Can I just interrupt you for 14 one sec? Has anyone else lost the real-time? 15 Because I lost it, and I just don't know how far 16 back . . .</p> <p>17 THE REPORTER: Can we go off the record for 18 a minute?</p> <p>19 MS. O'DELL: Yes.</p> <p>20 VIDEOGRAPHER: Off the record at 1:34. 21 (Recess taken.)</p> <p>22 VIDEOGRAPHER: We are back on the record at 23 1:41.</p> <p>24 Q. (By Ms. O'Dell) Mr. Downey, moving to 25 the topic that relates to the entities that</p>
Page 119	Page 121
<p>1 Q. It was. Yeah. You're right. Keep 2 going. I'm sorry.</p> <p>3 A. Elsewhere in my notes, peridotite is a 4 different serpentinite rock composed of pyroxene. 5 The dunite is composed of olivine. And it's 6 very -- that's a very pure magnesium silicate. So 7 peridotite is different than dunite.</p> <p>8 Q. But they're both ultramafic rocks, true?</p> <p>9 A. Generally, yes, that's my understanding.</p> <p>10 Q. And so in terms of peridotite, dunite is 11 a type of peridotite rock. It's different, but 12 it's a type of peridotite rock, true?</p> <p>13 A. I don't -- I think that I would say that 14 it's a different ultramafic. Peridotite is 15 composed of pyroxene, whereas dunite is composed of 16 olivine.</p> <p>17 Q. We might agree to disagree on that 18 point, but we'll move on. We can get through the 19 rest of our deposition without coming to an 20 agreement on that point.</p> <p>21 Let me show you what I'm marking -- I'm 22 going to transition to a new topic area, and that 23 is the topic on the notice that relates to 2A, 24 Roman numeral I, 2A, the identities and owners of 25 the source mines for Imerys or its predecessors</p>	<p>1 supplied or have supplied talc to J&J for its 2 talcum-powder products -- and I put a document in 3 front of you and I've marked it as Exhibit 9. And 4 it's Imerys Bates number 428014.</p> <p>5 Have you seen this document before?</p> <p>6 A. Yes.</p> <p>7 Q. And when's the first -- when did you 8 first have an opportunity to review this document?</p> <p>9 A. I think January of this year.</p> <p>10 Q. For what purpose did you review it?</p> <p>11 A. For the case in New Jersey.</p> <p>12 Q. For the Lanzo trial?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Where you provided testimony as a 15 corporate representative of Imerys, true?</p> <p>16 A. Yes.</p> <p>17 Q. And a couple of questions.</p> <p>18 First, is it your general understanding that 19 talc for J&J's talcum-powder products was mined or 20 sourced from the Hammondsville Mine from the 1960s 21 pretty much until Argonaut came online in the 22 1990s?</p> <p>23 MR. PROST: Object to form; outside the 24 scope.</p> <p>25 A. I don't recall how far back it predates,</p>

31 (Pages 118 to 121)

Patrick Downey

<p style="text-align: right;">Page 122</p> <p>1 but Hammondsville was an active mine and an 2 approved source in 1989 when Cyprus Mines purchased 3 Windsor Minerals. And it operated for just a 4 couple years after that Cyprus. 5 Q. (By Ms. O'Dell) And in 1989 when Cyprus 6 purchased Windsor Minerals -- and that's the 7 purchase agreement that we have in front of us is 8 Exhibit 9. 9 At that time, Cyprus also owned a mine in 10 Italy, right? The Val Chisone Mine? 11 MR. PROST: Outside the scope. 12 A. Are you saying that Cyprus owned that? 13 Q. (By Ms. O'Dell) Yes. 14 A. No, I don't think so. 15 Q. Don't think so? 16 A. No. 17 Q. And I could be -- I could be incorrect 18 about the time frame. 19 But they did own a processing plant, a 20 talc-processing plant, in South Plainfield, New 21 Jersey, at the time they purchased Windsor 22 Minerals, right? 23 MR. PROST: Outside the scope. 24 Q. (By Ms. O'Dell) You testified to that 25 in your testimony at Lanzo, correct?</p>	<p style="text-align: right;">Page 124</p> <p>1 A. I don't recall that being my testimony. 2 Q. (By Ms. O'Dell) You don't? 3 A. No. 4 Q. What was your testimony? 5 A. If you have it there, we can read it 6 back. I generally recall testimony about air 7 monitoring of the employees at South Plainfield. 8 Q. And you don't recall them finding 9 asbestos being present in talc? 10 MR. PROST: Object to form. 11 A. There may have been more than one 12 document that we discussed, and I would need to see 13 the document to see if that refreshes my 14 recollection. 15 Q. (By Ms. O'Dell) We'll pull that up. 16 And let me get my colleague, if she would do that 17 for me. And to save time, let's look at the 18 Exhibit 9, the purchase agreement between Windsor 19 Minerals and Cyprus Mines Corporation. 20 A. Exhibit 9? 21 Q. I'm sorry? 22 A. Exhibit 9? 23 Q. Yes, Exhibit 9. 24 Cyprus purchased the mines and the assets 25 essentially owned by West Windsor.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Well, I -- yes, they owned the South 2 Plainfield plant. I just don't recall when this 3 plant closed. 4 Q. And that was the plant where asbestos 5 was found, true? 6 MR. PROST: Object to form; outside the 7 scope. 8 A. What do you mean? 9 Q. (By Ms. O'Dell) Well, when it was 10 inspected by regulatory agencies, asbestos was 11 found, true? 12 MR. PROST: Same objections. 13 A. That's not quite my understanding. 14 There was some air monitoring that had been done. 15 Q. (By Ms. O'Dell) Did you finish your 16 answer? 17 A. Well, without recalling the specific 18 document, I didn't review Lanzo in preparation for 19 this. 20 Q. Do you recall that you testified that 21 the Mine Safety and Health, MSHA for short, went 22 into the South Plainfield facility in 1980, 23 inspected and determined that there was asbestos in 24 talc? Do you recall that testimony? 25 MR. PROST: Object to form.</p>	<p style="text-align: right;">Page 125</p> <p>1 And those included the mines at Vermont as 2 well as the processing plants, true? 3 MR. PROST: Object to form. 4 A. Generally speaking, yes, but when you 5 say "the mines in Vermont," which mines are you 6 talking about? 7 Q. (By Ms. O'Dell) Okay. Here's a list 8 here in the document. And why don't we go through 9 it in an orderly fashion. Let's get your general 10 knowledge. If you'll go to the first tab, you'll 11 see that it's -- 12 A. Time out. I'm a little bit tangled up 13 in the wire here. All right. There we go. 14 Q. Okay. If you'll go to 8.5, which is 15 tabbed for you in this -- 8.5 is a subsection of 16 the document. And it's tabbed for you there with 17 one of the stickies; do you see that? 18 MR. LOCKE: Sorry. I'm just trying to see 19 the -- what exhibit is. I don't want -- 20 MS. O'DELL: Do you need the Bates? 21 MR. LOCKE: I wasn't able to pull it up 22 right now. Okay. Thanks. 23 Q. (By Ms. O'Dell) This section relates to 24 a Talc Supply Agreement between Cyprus and J&J. 25 And is it your understanding that a</p>

Patrick Downey

Page 126	Page 128
<p>1 principal part of this transaction was that there</p> <p>2 would be a supply agreement for Cyprus to supply</p> <p>3 talc to Johnson & Johnson for its talcum-powder</p> <p>4 products?</p> <p>5 MR. PROST: Object to form; outside the</p> <p>6 scope.</p> <p>7 A. Yes, that's my understanding. And the</p> <p>8 supply agreement is part of the document.</p> <p>9 Q. (By Ms. O'Dell) And when you turn over</p> <p>10 further, Mr. Downey, you'll get to a section 11.2;</p> <p>11 do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And this is an indemnification section.</p> <p>14 And this represents J&J will hereby indemnify and</p> <p>15 hold harmless Cyprus. And if you look further,</p> <p>16 you'll see that it includes product-liability</p> <p>17 actions; is that your understanding?</p> <p>18 MR. PROST: Objection.</p> <p>19 MR. SILVER: Objection. At this point, I'm</p> <p>20 going to -- unless I can get a proffer from</p> <p>21 counsel, I'm going to instruct the witness not to</p> <p>22 answer. Beyond the scope.</p> <p>23 MS. O'DELL: It's in the document. It's a</p> <p>24 document he reviewed for purposes of responding to</p> <p>25 our scope in the discussions -- or questions about</p>	<p>1 MR. SILVER: Objection.</p> <p>2 I'm instructing the witness not to answer.</p> <p>3 Q. (By Ms. O'Dell) True?</p> <p>4 Turn over to the next tab, sir, and you'll</p> <p>5 see it's on page D2; do you see that?</p> <p>6 A. D what?</p> <p>7 Q. D2 is at the bottom of the page. I</p> <p>8 think you're on the right page, sir.</p> <p>9 A. That's a 6.</p> <p>10 Q. Okay. Well, are you on the page that</p> <p>11 starts "West Windsor" at the top?</p> <p>12 A. No, I'm on page D6. That's the one</p> <p>13 that's flagged, the next one that's flagged.</p> <p>14 Q. I'm sorry, then, we missed a flag. If</p> <p>15 you'll go back to D2. It lists the mines that were</p> <p>16 sold as a result of this agreement; do you see</p> <p>17 that?</p> <p>18 A. Mine says, "Financially Active Assets."</p> <p>19 Q. Let's see if I can help here. It says,</p> <p>20 "Windsor Financial Active Assets." Okay. So we're</p> <p>21 in the -- and it says, "Year of ACO." And then it</p> <p>22 says, "Department Description or Reserves." At the</p> <p>23 bottom it says D2. Is that the right page? Do you</p> <p>24 mind if I look to see what you're looking at?</p> <p>25 Yeah, we're on the same page. It says "D2."</p>
Page 127	Page 129
<p>1 the entities that sold talc to Johnson & Johnson.</p> <p>2 MR. SILVER: That question, though, has</p> <p>3 nothing to do the with the topics he's here for.</p> <p>4 And indemnification doesn't have anything to do</p> <p>5 with general causation.</p> <p>6 MS. O'DELL: So you're instructing him not</p> <p>7 to --</p> <p>8 MR. SILVER: I'm instructing him not to</p> <p>9 answer.</p> <p>10 MS. O'DELL: Okay. Are you instructing him</p> <p>11 not to answer on behalf of the corporation or are</p> <p>12 you instructing him not to answer in his personal</p> <p>13 capacity?</p> <p>14 MR. PROST: I'm instructing him not to</p> <p>15 answer across the board. He's not here in his</p> <p>16 personal capacity, so I guess it's in his 30(b)(6)</p> <p>17 capacity.</p> <p>18 Q. (By Ms. O'Dell) Have you read that</p> <p>19 section before, Mr. Downey?</p> <p>20 MR. SILVER: You can answer the question</p> <p>21 asked of you. Have you ever read the section?</p> <p>22 A. I've read it before, parts of it.</p> <p>23 Q. (By Ms. O'Dell) And it refers to --</p> <p>24 regardless of what it means, it refers to J&J</p> <p>25 indemnifying Cyprus?</p>	<p>1 A. Sure.</p> <p>2 Q. Are these a list of the mines conveyed</p> <p>3 as a part of this purchase agreement, at least in</p> <p>4 part? Do you see the Hammondsville Mine?</p> <p>5 A. I see where it says "Hammondsville</p> <p>6 Mine," yes.</p> <p>7 Q. Well, let me just stop right here,</p> <p>8 because you reviewed this agreement, right?</p> <p>9 A. Pardon?</p> <p>10 Q. You've reviewed this agreement?</p> <p>11 A. It's a lengthy agreement. I reviewed it</p> <p>12 about eight months ago.</p> <p>13 Q. Okay. Well --</p> <p>14 A. And I didn't review it in its entirety.</p> <p>15 It's quite long.</p> <p>16 Q. What mines were purchased in Vermont as</p> <p>17 a result of this purchase agreement between Cyprus</p> <p>18 and Windsor?</p> <p>19 MR. SILVER: Objection. Again, outside the</p> <p>20 scope.</p> <p>21 MS. O'DELL: Why is it outside the scope?</p> <p>22 MR. SILVER: We're not doing a -- this --</p> <p>23 these -- the topics that you identified that you</p> <p>24 believe -- doesn't have anything to do with the</p> <p>25 history of ownership with respect to use -- the</p>

33 (Pages 126 to 129)

Patrick Downey

Page 130	Page 132
<p>1 topic says, and I quote, 2A, "The identity, 2 locations and owners of the source mines for Imerys 3 or its predecessor talc sold or supplied." 4 We're not talking about the identities and 5 locations. We're talking about ownership 6 interests. 7 MS. O'DELL: Well, right. I'm asking him -- 8 this is Cyprus purchasing the mines from Windsor. 9 And I'm asking him -- he says he's reviewed the 10 documents -- what mines were purchased? That's all 11 I want to know. I mean, I'm not trying to be 12 tricky. I'm not trying to, you know, be difficult. 13 So if there's an issue that I'm not 14 understanding -- 15 MR. PROST: I think the key part of 2A is 16 the "identity locations of mines that were used to 17 source J&J talcum powder." He's prepared to do 18 that. He's not prepared to tell you what total 19 mines may have been purchased -- 20 MS. O'DELL: Okay. 21 MR. PROST: -- for the company. 22 MS. O'DELL: Well, that's fair. 23 Q. (By Ms. O'Dell) I don't really care 24 about some of the others as much as I'm trying to 25 establish that this document, dated in 1989 --</p>	<p>1 A. Almost. Hamm was purchased from a 2 different company. 3 Q. Okay. What company? 4 A. Omya. 5 Q. All right. When was the Hamm Mine 6 purchased by Omya? 7 A. 1988. 8 Q. So it's your understanding that Cyprus 9 purchased the Hamm Mine in 1988 from Omya, and in 10 1989 they purchased -- Cyprus purchased 11 Hammondsville, Argonaut and Rainbow? 12 A. Yes. Of the mines that eventually were 13 approved sources, or at various times were approved 14 sources for Johnson & Johnson products, those were 15 the mines that were acquired in 1988 and 1989 from 16 Omya and Windsor Minerals respectively. 17 Q. Okay. All right. Fair enough. 18 And we've already agreed that part of this 19 agreement, this purchase agreement, between Windsor 20 and Cyprus was a stock supply agreement between 21 Cyprus and Johnson & Johnson, fair? 22 A. Yes. 23 Q. And if you turn further, you'll see that 24 I've made it a part of the exhibit the Talc Supply 25 Agreement. And if you'll turn over to the first</p>
Page 131	Page 133
<p>1 correct? 2 A. Yes. 3 Q. -- conveyed from Windsor to Cyprus 4 certain mines that ultimately sourced J&J talc. 5 Is that your understanding? 6 MR. SILVER: We don't have any problems with 7 that. That's not my objection. If you would 8 either -- if that's where you're going, then I 9 don't have any problems with it. 10 MS. O'DELL: That's where I'm going. 11 MR. SILVER: Okay. 12 Q. (By Ms. O'Dell) True? 13 A. Yes. The mines that -- if it's found in 14 the document, but my understanding is 15 Hammondsville, Argonaut and Rainbow were the mines 16 that Cyprus Mines acquired from -- or acquired when 17 they acquired Windsor Minerals. 18 Q. Is it also your -- 19 A. And -- sorry. And just to be clear, the 20 mines that were approved sources, depending on time 21 frame, for the talc used for Johnson & Johnson 22 products. 23 Q. Also Hamm was a mine that was purchased 24 by Cyprus and was used as a source for J&J talc, 25 true?</p>	<p>1 sticky there in the Talc Supply Agreement, you'll 2 see there's a section 3(a). 3 MR. PROST: If you could hold on a second, 4 I'm just trying to find it. 5 MS. O'DELL: Yeah. Sure. 6 Q. (By Ms. O'Dell) And it's page 5 of the 7 Talc Supply Agreement. Are you there, Mr. Downey? 8 A. Yeah. 9 MS. O'DELL: Mark, it's page 5. It's 10 further back in the document. It's very early in 11 the Talc Supply Agreement. 12 MR. PROST: Okay. I see. I got it. 13 Q. (By Ms. O'Dell) And my point in asking 14 about this, really, is to establish this: This 15 supply agreement between Cyprus and 16 Johnson & Johnson was such that the buyer, in other 17 words, Johnson & Johnson, agreed to buy a hundred 18 percent of their talc from Cyprus? 19 A. For the first five years, and then in 20 the next five years, it was not less than 98 21 percent. 22 Q. And if you'll turn to, really, the 23 exhibit, you'll see page E.1 of the document. This 24 is the quality standards that were part of the 25 supply agreement, correct?</p>

34 (Pages 130 to 133)

Patrick Downey

<p style="text-align: right;">Page 134</p> <p>1 A. Yes.</p> <p>2 Q. And it states, in subsection 1,</p> <p>3 "Johnson & Johnson is currently and must continue</p> <p>4 to be asbestos-free as defined from time to time by</p> <p>5 appropriate governmental agencies in the Cosmetic,</p> <p>6 Toiletries, and Fragrance Association (CTFA)."</p> <p>7 Is that your understanding?</p> <p>8 A. That's what it says, yes.</p> <p>9 Q. And that's consistent with your</p> <p>10 understanding?</p> <p>11 A. Yeah.</p> <p>12 Q. And if you'll look down to 3, it says,</p> <p>13 "The Hammondsville and Argonaut ore bodies are</p> <p>14 approved for carefully controlled selected mining</p> <p>15 for ore to [sic] use in preparation of grade 66</p> <p>16 talc," correct?</p> <p>17 A. "For ore for use," but, yes, that's</p> <p>18 correct.</p> <p>19 Q. And grade 66 talc is Johnson & Johnson's</p> <p>20 Baby Powder and Shower to Shower talc, correct?</p> <p>21 A. Grade 66 is the talc product that we</p> <p>22 manufacture for Johnson & Johnson.</p> <p>23 Q. And if you'll turn over to the next</p> <p>24 page, the agreement requires that the shipments</p> <p>25 "may only be made from silos whose contents," and</p>	<p style="text-align: right;">Page 136</p> <p>1 talc supplied to J&J, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And in relation to asbestos, the</p> <p>4 standard was "None detected."</p> <p>5 Asbestos is defined to be the fibrous</p> <p>6 serpentine chrysotile and the fibrous forms of the</p> <p>7 amphibole group as represented by amosite,</p> <p>8 anthophyllite, crocidolite, tremolite and</p> <p>9 actinolite; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And if you'll go down further, in terms</p> <p>12 of heavy metals, the specification was there could</p> <p>13 be no more than 10 parts per million, true?</p> <p>14 A. It says "NMT 10 PBM." That's my</p> <p>15 understanding.</p> <p>16 Q. "NMT" means no more than?</p> <p>17 A. That's my understanding, yes.</p> <p>18 Q. And as to arsenic, the standard, in</p> <p>19 other words, the talc could have no more than 2</p> <p>20 parts per million, true, in order to be compliant</p> <p>21 with J&J's specifications?</p> <p>22 A. Yes.</p> <p>23 Q. And if talc supplied by Cyprus to J&J</p> <p>24 had, for example, fibrous serpentine, that product</p> <p>25 would be out of specifications, true?</p>
<p style="text-align: right;">Page 135</p> <p>1 if you'll gown to subsection B, "have been tested</p> <p>2 for conformance to specifications through the use</p> <p>3 of test methods and techniques provided and</p> <p>4 detailed by BPC as referenced in talc</p> <p>5 specifications above."</p> <p>6 In other words, to sum it all up, there were</p> <p>7 very specific specifications that J&J required to</p> <p>8 be met by all talc that was sold to it, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And those specifications were part of</p> <p>11 the purchase agreement -- or the supply agreement,</p> <p>12 excuse me, true?</p> <p>13 A. Yes, they were.</p> <p>14 Q. And if you'll turn over to -- it's E5.</p> <p>15 These are at least page 1 of the specifications and</p> <p>16 requirements; is that correct?</p> <p>17 A. E5?</p> <p>18 Q. Yes.</p> <p>19 A. It says "Page 2" on the header.</p> <p>20 Q. At the bottom it says "E5," and the page</p> <p>21 is entitled "Description: Properties and</p> <p>22 Requirements"; do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And these are the specifications that</p> <p>25 Cyprus was required to comply with regarding the</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Yes.</p> <p>2 Q. And it would be, in essence, defective</p> <p>3 in comparison to the specifications required by</p> <p>4 Johnson & Johnson?</p> <p>5 MR. PROST: Object to form.</p> <p>6 A. It would be out of specification. I</p> <p>7 don't know what you mean by "defective."</p> <p>8 Q. (By Ms. O'Dell) Okay. Same would be</p> <p>9 true if arsenic was at a level in the talc provided</p> <p>10 to J&J at a rate more than two parts per million.</p> <p>11 That would be out of specification?</p> <p>12 A. Yes.</p> <p>13 Q. Let me have you turn over about three</p> <p>14 pages. And there's a -- maybe one more,</p> <p>15 Mr. Downey. There's a material safety data sheet.</p> <p>16 There you go. You'll see that. It's a material</p> <p>17 safety data sheet that was part of the contract,</p> <p>18 supply contract, between Cyprus and J&J.</p> <p>19 And you see it's dated September 13, 1985?</p> <p>20 A. Looking for the date.</p> <p>21 Q. It's in the upper portion of the</p> <p>22 document.</p> <p>23 A. Oh, I see it. Okay.</p> <p>24 Q. "Date Issued." It says, "Trade name and</p> <p>25 synonym grade 66 talc," right? That's J&J talc,</p>

35 (Pages 134 to 137)

Patrick Downey

Page 138	Page 140
<p>1 true?</p> <p>2 A. Yes.</p> <p>3 Q. And the material safety data sheet says,</p> <p>4 "Note"; do you see that? "Does not contain</p> <p>5 asbestiform minerals and contains less than 1</p> <p>6 percent crystalline silica"; did I read that</p> <p>7 correctly?</p> <p>8 A. Yes.</p> <p>9 Q. So on the material safety data sheet</p> <p>10 provided by Cyprus to Johnson & Johnson, it stated</p> <p>11 there were no -- that the talc does not contain</p> <p>12 asbestiform minerals, true?</p> <p>13 A. No.</p> <p>14 Q. Okay. Why is that not true?</p> <p>15 A. This is the material safety data sheet</p> <p>16 of Windsor Minerals dated 1985. That wasn't a</p> <p>17 Cyprus product at that time.</p> <p>18 Q. Did you make it a part of the material</p> <p>19 safety data sheet -- did Cyprus make that a part of</p> <p>20 the materials they provided to Johnson & Johnson</p> <p>21 when they shipped talc?</p> <p>22 A. Cyprus would have updated the material</p> <p>23 safety data sheet so that it would have been issued</p> <p>24 from them, I would expect, but your question was</p> <p>25 specifically about this document that was dated in</p>	<p>1 Cyprus had already purchased the Hamm Mine in 1988,</p> <p>2 true?</p> <p>3 A. Yes. That's what I said.</p> <p>4 Q. And then, in 1992, Rio Tinto Minerals,</p> <p>5 RTM for short, purchased Cyprus?</p> <p>6 A. RT -- RTZ America purchased Cyprus Talc</p> <p>7 Corp. in 1992.</p> <p>8 Q. Okay. Let me show you what I'm marking</p> <p>9 as Exhibit Number 10.</p> <p>10 (Exhibit 10 was marked for identification.)</p> <p>11 MS. O'DELL: And there are Bates numbers.</p> <p>12 I've got one more. Exhibit 10 is Bates-numbered</p> <p>13 Imerys-MDL-AB-0008412.</p> <p>14 Q. (By Ms. O'Dell) Mr. Downey, have you</p> <p>15 seen this document before?</p> <p>16 A. Yes, or various portions of it.</p> <p>17 Q. I will represent to you that the total</p> <p>18 documents, about 900 pages -- and I have culled it</p> <p>19 down to the most relevant portions.</p> <p>20 A. I appreciate that.</p> <p>21 Q. Yeah.</p> <p>22 A. What page are you on?</p> <p>23 Q. It was just a prefatory question. I was</p> <p>24 just looking at the -- I was looking, actually, at</p> <p>25 page 3 of the document. You're welcome to turn</p>
Page 139	Page 141
<p>1 1985, and I just wanted to make sure that the</p> <p>2 record was clear.</p> <p>3 Q. That's fair.</p> <p>4 Have you seen the Cyprus version of this</p> <p>5 material safety data sheet for grade 66 talc?</p> <p>6 A. I don't recall.</p> <p>7 Q. At least on this MSDS sheet, the</p> <p>8 statement is that the product does not contain</p> <p>9 asbestiform minerals, correct?</p> <p>10 A. That's what it says.</p> <p>11 Q. All right. So Cyprus bought Windsor and</p> <p>12 Argonaut and Hammondsville and Rainbow in 1989.</p> <p>13 We've already established that --</p> <p>14 A. Slow down. I just want to catalog to</p> <p>15 make sure that I'm following. So you said?</p> <p>16 Q. Mr. Downey, nobody ever tells me to slow</p> <p>17 down, I talk so slow. So that's a</p> <p>18 once-in-a-lifetime. But I will slow down. So I'm</p> <p>19 just wrapping up.</p> <p>20 So this document was a purchase agreement</p> <p>21 for Cyprus to buy Windsor Minerals, that part of</p> <p>22 that transaction was the purchase of the</p> <p>23 Hammondsville, Argonaut and Rainbow mines?</p> <p>24 A. Yes.</p> <p>25 Q. And prior to that agreement in 1989,</p>	<p>1 there, but I was just going to ask you a general</p> <p>2 question, because I'm going to draw an objection</p> <p>3 from your counsel if I ask about any of the</p> <p>4 business aspects of it.</p> <p>5 So the question, I really want to say</p> <p>6 generally, is this was a stock purchase between</p> <p>7 Cyprus Mines Corporation, Cyprus Minerals and RTZ</p> <p>8 America, Inc., true?</p> <p>9 A. Cyprus Minerals Company, if you want to</p> <p>10 read the whole thing. The reason I'm trying to be</p> <p>11 clear is that there are so many Cyprus entities, I</p> <p>12 just want to make sure we know what we're talking</p> <p>13 about Cyprus.</p> <p>14 Q. Well, the document says -- I'm not</p> <p>15 fussing with you, this says "Cyprus Mines</p> <p>16 Corporation and Cyprus Minerals Corporation," so I</p> <p>17 don't want to talk at cross-purposes. I'm not</p> <p>18 looking beyond that. I'm just telling you that's</p> <p>19 what this document is. And it's a stock purchase</p> <p>20 agreement between those companies, those Cyprus</p> <p>21 companies, and RTZ.</p> <p>22 A. Again, for clarity, I believe it's</p> <p>23 Cyprus Mines Corporation and Cyprus Minerals</p> <p>24 Company, not corporation. I'm just trying to make</p> <p>25 sure we're clear.</p>

36 (Pages 138 to 141)

Patrick Downey

Page 142	Page 144
<p>1 MR. SILVER: Yeah. Leigh, I don't think --</p> <p>2 just -- so the witness is, I think, looking at the</p> <p>3 table of contents, and I think that's where he's</p> <p>4 getting it from. I don't know what page you were</p> <p>5 reading off, so that's . . .</p> <p>6 MS. O'DELL: Okay.</p> <p>7 A. It's the same on the cover page as well.</p> <p>8 Q. (By Ms. O'Dell) Okay. I -- I mean,</p> <p>9 it's really -- I was trying to read that. If I</p> <p>10 read it incorrectly, I didn't mean to. So it's</p> <p>11 Cyprus Mines Corporation, Cyprus Minerals Company,</p> <p>12 sold stock, all the stock, of those corporations to</p> <p>13 RTZ America essentially transferring ownership</p> <p>14 interest in all the mines that had been sourcing</p> <p>15 J&J talc which we've established were</p> <p>16 Hammondsville, which was the initial mine, Hamm,</p> <p>17 Rainbow, Argonaut.</p> <p>18 Those assets were transferred with this</p> <p>19 agreement through a stock purchase to RTZ America,</p> <p>20 Inc.?</p> <p>21 MR. PROST: Object to form.</p> <p>22 A. The document will speak for itself.</p> <p>23 There were parts of the Hamm property that were</p> <p>24 left behind.</p> <p>25 Q. (By Ms. O'Dell) But the Hamm Mine</p>	<p>1 pages, it has due diligence regarding Vermont talc;</p> <p>2 do you see that?</p> <p>3 A. Can you give me a hint on where it's at?</p> <p>4 Q. Yeah.</p> <p>5 A. 9027?</p> <p>6 Q. Yeah. 9027. Yup.</p> <p>7 A. Okay. What . . .</p> <p>8 Q. The upper third of the page, you see</p> <p>9 April 11, 1988.</p> <p>10 A. Okay.</p> <p>11 Q. "Due diligence on Vermont talc," do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. And so this is information about the</p> <p>15 mines owned at that time by Cyprus providing</p> <p>16 due-diligence information to Rio Tinto as part of</p> <p>17 this purchase agreement, correct?</p> <p>18 A. More specifically, these were Rio</p> <p>19 due-diligence documents that Cyprus had prepared in</p> <p>20 1988 in advance of their purchase of the Vermont</p> <p>21 Talc Company.</p> <p>22 Q. And these were -- this was -- these were</p> <p>23 documents -- this document was made a part of the</p> <p>24 purchase agreement between Rio Tinto and Cyprus?</p> <p>25 MR. PROST: Object to form.</p>
Page 143	Page 145
<p>1 itself was a part of the agreement that resulted in</p> <p>2 ownership being transferred to Rio Tinto?</p> <p>3 MR. PROST: Object to form.</p> <p>4 A. There were two Hamm mines. That's why</p> <p>5 I'm trying to be clear. The Hamm underground mine</p> <p>6 did not transfer in this transaction. The Hamm</p> <p>7 open pit did.</p> <p>8 Q. (By Ms. O'Dell) Let's get more basic.</p> <p>9 RTZ America is Rio Tinto. Let's make sure</p> <p>10 that's clear on the record.</p> <p>11 A. RTZ is Rio Tinto Zinc. That's what it</p> <p>12 stood for.</p> <p>13 Q. Let me ask you to turn to Bates</p> <p>14 number 9025, "Schedule 5.16 Environmental</p> <p>15 Information."</p> <p>16 A. I'm sorry. 90?</p> <p>17 Q. 9025.</p> <p>18 A. 25.</p> <p>19 Q. Do you see that, sir?</p> <p>20 A. I'm there. Yes.</p> <p>21 Q. And so this was environmental</p> <p>22 information that was made a part of the stock</p> <p>23 purchase agreement, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And so if you'll turn over two</p>	<p>1 A. It was included in the document, yes.</p> <p>2 Q. (By Ms. O'Dell) Yes. And this</p> <p>3 document, if you'll look down at the bottom, refers</p> <p>4 to the Hamm Mine; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And this states -- and this is Cyprus,</p> <p>7 as you point out, writing this -- "Will require</p> <p>8 selective mining to avoid actinolite and to control</p> <p>9 arsenic levels."</p> <p>10 That was part of the information that was</p> <p>11 conveyed to Rio Tinto, true?</p> <p>12 MR. PROST: Object to form.</p> <p>13 A. It was information conveyed to</p> <p>14 Rio Tinto, and the source of the information and</p> <p>15 the date is 1988.</p> <p>16 Q. (By Ms. O'Dell) Okay. Now, turn over</p> <p>17 to page 6. And it's Bates number -- excuse me --</p> <p>18 9030.</p> <p>19 A. 30?</p> <p>20 Q. Yeah. 9030. Do you see that?</p> <p>21 A. I'm there. Yes.</p> <p>22 Q. It says October -- dated October 19th,</p> <p>23 1988.</p> <p>24 A. Okay.</p> <p>25 Q. It says, "Hammondsville Mine:</p>

37 (Pages 142 to 145)

Patrick Downey

<p style="text-align: right;">Page 146</p> <p>1 Amphiboles in hanging and foot walls"; do you see 2 that? 3 A. Yes. 4 Q. "Rainbow Mine: Elevated levels of 5 amphiboles"; do you see that? 6 A. Yes. 7 Q. "Argonaut Mine: Amphiboles in hanging 8 walls." 9 A. "Hanging wall." 10 Q. Excuse me. Didn't mean to put an "s" on 11 there. "Hanging wall." 12 All right. Did I read those correctly? 13 A. Yes. 14 Q. And that was information provided to 15 Rio Tinto as a part of this purchase agreement, 16 correct? 17 A. Yes. 18 Q. You can put that aside, Mr. Downey. 19 So in 1992, Rio Tinto purchased Cyprus 20 Mineral Company and Cyprus -- hang on, I'll get it 21 right -- Cyprus Mines Corporation and Cyprus 22 Minerals Company? 23 A. No. 24 Q. I just read it from the document. 25 A. You said that Rio Tinto purchased Cyprus</p>	<p style="text-align: right;">Page 148</p> <p>1 was the Hamm open-pit mine that went with the 2 transaction. 3 Q. That's fair. That's fair. 4 A. It was the Hamm underground mine that 5 was left behind. 6 Q. Yeah, that's fair. That's what I was 7 trying to convey. I mean, because, clearly, 8 Rio Tinto purchased the Hamm open-pit mine and, 9 indeed, after that transaction, extracted talc ore 10 that was then sold to Johnson & Johnson, true? 11 MR. PROST: Object to form. 12 A. That acquisition was in 1992. 13 Q. (By Ms. O'Dell) Yes. 14 A. The Hamm Mine was eventually approved as 15 a source for Johnson & Johnson product, I believe 16 it was, like, September of 1990. There are 17 documents that show when that happened. And I 18 don't recall how long Hamm was used as a source, 19 you know, if it continued after 1992, so I'm -- 20 the -- we can find it in the documents, but I'm 21 just trying to make clear, because Hamm was used 22 for a limited period of time, and then by, like, 23 1994, Argonaut was the sole source. That's my 24 understanding. 25 Q. Okay. I think the timeline's a little</p>
<p style="text-align: right;">Page 147</p> <p>1 Mines Corp. and Cyprus Minerals Company. No, they 2 didn't. 3 Q. Okay. All right. How'd I get the 4 transaction wrong, then? They purchased the stock? 5 A. They purchased the stock of Cyprus Talc 6 Corporation. The document -- I can give you a 7 synopsis of it, but the document speaks for itself. 8 In 1992, for the purpose of selling the talc 9 business, Cyprus Mines Corporation took its 10 then-existing talc business and formed a new 11 corporation called Cyprus Talc Corporation. And it 12 put the talc business into Cyprus Talc Corp. And 13 it was that entity, Cyprus Talc Corporation, that 14 Cyprus Mines Corp. and Cyprus Minerals Company sold 15 to RTZ America except for the portion of the Hamm 16 property that was left behind. 17 Q. And in regard to the portion of the Hamm 18 property that went with the sale -- so a portion of 19 the Hamm was left behind -- 20 A. Okay. Yeah. 21 Q. -- and a portion went with the sale? 22 A. Right. 23 Q. And the portion that went with the sale 24 was the portion with the mine? 25 A. Again, there were two Hamm mines. It</p>	<p style="text-align: right;">Page 149</p> <p>1 bit different in the documents. But you and I 2 basically agree, Hamm was a source for J&J talc -- 3 A. Oh, it's clear. Yes. 4 Q. And the open pit -- Hamm -- the open-pit 5 mine was a source for -- 6 A. Yes. 7 Q. -- J&J talc. 8 Following Rio Tinto's purchase of Cyprus 9 Talc Corporation in '92, the name of the 10 corporation was changed to Luzenac America, Inc., 11 correct? 12 A. Shortly after the transaction, Cyprus 13 Talc Corporation, that was that newly created 14 corporation about to convey the talc business -- or 15 to sell it, that was renamed Luzenac America, Inc. 16 Q. And what began as Cyprus and then 17 transitioned to RTZ America and then to Luzenac 18 America, Inc., those corporations, from 1989 until 19 2003, sold talc mined in Vermont to J&J for 20 purposes of their Baby Powder products? 21 MR. PROST: Object to form. 22 A. Based on time frame -- when you say 23 "Cyprus," I just need to be clear, because there's 24 so many different Cyprus entities, and I don't want 25 to make a mistake on the record.</p>

Patrick Downey

Page 150	Page 152
<p>1 It's my understanding that, beginning in 2 1989, Cyprus Mines, through its acquisition of 3 Windsor Minerals, supplied grade 66 to 4 Johnson & Johnson -- just a minute -- until Cyprus 5 Mines Corp. sold off the talc business to Rio Tinto 6 in 1992. Then in 1992, as part of that 7 acquisition, Luzenac America sold grade 25 to 8 Johnson & Johnson from '92 until 2003 from Vermont. 9 Q. Yes. 10 A. Or from the mines we discussed in 11 Vermont. 12 Q. And as a part of Rio Tinto's 13 due-diligence process prior to the stock purchase 14 of Cyprus Talc, Cyprus provided information to 15 Rio Tinto about the ore bodies involved in the 16 Vermont mines as well as information about ore 17 reserves, et cetera? 18 MR. PROST: Outside the scope. 19 Q. (By Ms. O'Dell) And that was all a part 20 of the due-diligence process, true? 21 A. Due diligence is a multi-faceted process 22 to understand the nature of the business. And 23 there are lots of types of documents and 24 information that's exchanged between the 25 corporations in regard to that due-diligence</p>	<p>1 MR. PROST: If we could just say the Bates 2 number? 3 MS. O'DELL: Yeah. Thanks, Mark. Happy to. 4 Imerys 425354. 5 Q. (By Ms. O'Dell) Have you seen this 6 document before? 7 A. Yes. It's been a while, but yes. 8 Q. And if you'll look at the introduction 9 of the document, Mr. Downey, you'll see it says -- 10 A. Can you hold a second? 11 Q. Sure. 12 A. (Document reviewed.) I may have 13 misspoke. In the past, I've seen a document from 14 R.C. Munro that, at least on the first page, I 15 thought was familiar, but as I look in the 16 document, this -- this might be a different 17 document. 18 Q. Okay. 19 A. Sorry about that. 20 Q. Yeah. No problem. But this is a 21 document produced by Imerys in the production for 22 the litigation, correct? 23 A. Yes. It has an Imerys Bates reference. 24 Q. Would -- an ore reserve evaluation would 25 be something that would be kept by a mining company</p>
Page 151	Page 153
<p>1 process. 2 Q. Certainly, information about ore 3 reserves would be something that a company would be 4 very interested in prior to purchasing a mine, 5 true? 6 MR. PROST: Object to form. 7 A. Yeah. The ore reserves are important. 8 Q. (By Ms. O'Dell) That's right. Hugely 9 important, because that's how you evaluate the 10 worth of that particular asset, true? 11 A. It's one of the components that you -- 12 that helps establish the value. 13 Q. It's an important component? 14 A. It's one of many important components. 15 Q. Well, there's no -- if you're in the 16 mining business and there's no ore to be mined, you 17 don't want to purchase the mine, in most 18 situations, true? 19 A. Generally speaking, I'd agree with that. 20 Q. Yeah. 21 (Exhibit 11 was marked for identification.) 22 Q. (By Ms. O'Dell) Let me hand you what 23 I've marked as Exhibit 11. It's a document 24 entitled "Cyprus Ore Reserve Evaluation Preliminary 25 Summary" by R.C. Munro.</p>	<p>1 in the normal course of business? 2 A. It's a document that is contained in 3 Imerys' files. This particular one, though, I 4 think was a third-party document, and I don't 5 remember its progeny, or its source. I know it was 6 in our files, but I don't know if it was a company 7 document. 8 Q. That's really all -- that's what I'm 9 asking. Is it something that would be maintained 10 in the normal course of business? 11 So this is a Cyprus -- this is information 12 that's being given by Cyprus in advance of the 13 Rio Tinto transaction. If you look, it says, "A 14 complete evaluation of CIM talc reserves is 15 underway." 16 MR. PROST: Object to form. 17 A. This is -- 18 Q. (By Ms. O'Dell) Did I read that 19 correctly, sir? That was my question. 20 A. Well, you characterized it as 21 information provided by Cyprus. This isn't a 22 Cyprus report. 23 Q. Okay. Let me go down further. 24 Is it your position that this is a document 25 that was generated by Rio Tinto?</p>

39 (Pages 150 to 153)

Patrick Downey

Page 154	Page 156
<p>1 A. I don't know who it was generated by 2 other than the author is shown as R.C. Munro. I 3 don't recall -- other than his name being on the 4 document, I don't know who he worked for, but it's 5 my general understanding, based on seeing it in the 6 past, I think it was some sort of external review. 7 Q. Well, the complete evaluation is "CIM 8 talc reserves, and I believe that to mean Cyprus 9 talc reserves, "is underway." 10 And if you'll look in the first paragraph, 11 it says (as read:) Two USB senior geologists have 12 been conscripted part-time for independent reserve 13 calculations on the important talc deposits. 14 Then further, it says (as read:) We've been 15 working with Philippe Moreau of Talc Luzenac, Ernie 16 Reade of CIM and the CIM geological staff; did I 17 read that correctly? 18 MR. PROST: Object to form. 19 A. Parts of it. I think you skipped a word 20 in the upper one, and you skipped over some things. 21 Q. (By Ms. O'Dell) I didn't intend to read 22 every word, but what I read, I read correctly, 23 fair? 24 A. You skipped over some words and some 25 other things, but what you read was correct.</p>	<p>1 Q. It says, "The Hamm deposit needs more 2 detailed study before its future value is 3 understood. Significant additional potential may 4 exist at Argonaut"; do you see that? 5 A. Yes. 6 Q. So this is a document that's evaluating 7 Hammondsville. It's evaluating Hamm. It's 8 evaluating Argonaut, all three mines that sourced 9 J&J talc, true? 10 MR. PROST: Object to form. 11 A. This is a document that indicates that 12 the review is ongoing. 13 Q. (By Ms. O'Dell) That's not my question, 14 sir. 15 I'm asking you, this is -- these -- the 16 review covers the three of the four mines that you 17 and I have agreed were sources of talc for J&J Baby 18 Powder and Shower to Shower; is that correct? 19 MR. PROST: Object to form and foundation. 20 A. It includes those mines, yes. 21 Q. (By Ms. O'Dell) Yes. And it says, 22 you'll look further down, "Some problems with 23 several of the mine reserve sites have emerged. 24 Fibrous minerals - tremolite and actinolite are 25 ubiquitous in several zones of the Vermont mines.</p>
Page 155	Page 157
<p>1 Q. All right. Philippe Moreau is an 2 employee of Talc Luzenac. Philippe Moreau 3 currently is an employee of Imerys Europe, correct? 4 A. I have no idea. 5 Q. Have you heard that name before? 6 A. Only in a document like this. 7 Q. And you understand that he was a senior 8 geologist for Luzenac, correct? 9 A. I don't know. 10 Q. Okay. Let me ask you to turn to page 2 11 of the document. Let's see if I can get it on the 12 screen correctly. 13 It says -- it's referring to Hammondsville. 14 And that's the Hammondsville Mine, the underground 15 mine we referred to earlier, true? 16 A. Yes. 17 Q. "Hammondsville and Beaverhead appear to 18 have no significant economic value as reserves." 19 Then it talks about the Troy deposit. "The 20 usable tonnage at the Troy deposit is substantially 21 reduced." 22 A. The what? Did you say "unusual"? 23 Q. No, I didn't. "Usable." 24 A. Oh, okay. I'm sorry. My hearing isn't 25 the best. I apologize.</p>	<p>1 The potential problems involved with fibre in 2 dumps, and to some degree in products, must be 3 carefully evaluated"; did I read that correctly? 4 A. Yes. 5 Q. If you'll turn over to page 4, at the 6 top of the page, it says, "Arsenic minerals, both 7 insoluble sulfides and the more soluble arsenate 8 minerals are problems that restrict productivity in 9 an effort to keep product under 3 parts per million 10 soluble as in the West Windsor and Johnson Mills." 11 West Windsor is the mill that processed 12 J&J's talc, correct? 13 A. Yes. 14 Q. You'll turn over to page 23 of the 15 document, do you see it's discussing Vermont? 16 Okay. 17 Talks about two dry mills, two flotation 18 plants, five mines at the three Vermont locations. 19 And then it goes down to say -- and it's 20 talking about mineralogy. It says, "The area 21 containing these reserves is all within the 22 Appalachian Ultramafic Belt that trends north-south 23 through the state. In certain areas, these 24 ultramafics host talc carbonate rock developed by 25 the alteration of serpentinite bodies," correct?</p>

40 (Pages 154 to 157)

Patrick Downey

Page 158	Page 160
<p>1 A. That's what it says.</p> <p>2 Q. And that's consistent with the</p> <p>3 discussion you and I had earlier, though we</p> <p>4 disagree about what type of ultramafic rock may</p> <p>5 have been involved, fair?</p> <p>6 A. Generally, yes.</p> <p>7 Q. If you'll turn over to page 24, it says,</p> <p>8 (as read:) Talc alteration typically is strongest</p> <p>9 at the outer borders of the talc bodies and</p> <p>10 decreases gradationally inwards terminating rather</p> <p>11 abruptly at the boundaries of the non-altered talc</p> <p>12 serpentinite; did I read that correctly?</p> <p>13 A. No.</p> <p>14 Q. Okay. What'd I get wrong?</p> <p>15 A. You inserted the word "talc" before</p> <p>16 "serpentinite."</p> <p>17 Q. Okay. "Talc alteration typically is</p> <p>18 strongest at the outer borders of the talc bodies</p> <p>19 and decreases gradationally inwards terminating</p> <p>20 rather abruptly at the boundaries of non-altered</p> <p>21 serpentinite"; did I read that correctly now?</p> <p>22 A. Yes, you did.</p> <p>23 Q. "Within the talc bodies are found</p> <p>24 discontinuous bed-like lenticular bodies of</p> <p>25 chlorite and amphibole minerals, termed locally as</p>	<p>1 Q. Okay. Yes. All right. Cool.</p> <p>2 MR. PROST: I think he's not finished with</p> <p>3 his response. I'd like to let him finish.</p> <p>4 Q. (By Ms. O'Dell) You may finish,</p> <p>5 Mr. Downey, but -- and I want to be fair to you.</p> <p>6 You can finish your answer, but it'll just be</p> <p>7 easier if you'll answer my question when it's a</p> <p>8 very clear answer, a very clear-cut question like</p> <p>9 that. So you may finish.</p> <p>10 MR. PROST: Well, I think he can answer to</p> <p>11 the extent he thinks he needs to to honestly answer</p> <p>12 the question.</p> <p>13 So go ahead, Pat, if you'd like, to continue</p> <p>14 what you were saying.</p> <p>15 A. Tremolite and actinolite are amphibole</p> <p>16 minerals. Their most common occurrence is in the</p> <p>17 nonasbestos variety. Their occurrence in the</p> <p>18 asbestos variety as tremolite asbestos or</p> <p>19 actinolite asbestos is actually rare.</p> <p>20 Q. (By Ms. O'Dell) Okay. Thank you for</p> <p>21 your answer.</p> <p>22 MS. O'DELL: Counsel, just so you know, that</p> <p>23 response -- I didn't ask if they were rare. I</p> <p>24 didn't ask how common they were. Didn't ask any of</p> <p>25 those questions. So to be fair to me, I'm just</p>
Page 159	Page 161
<p>1 'cinders,' see sketch," and there's a sketch below,</p> <p>2 all right? Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And so according to Mr. Munro, chlorite</p> <p>5 and amphibole minerals compose what are termed</p> <p>6 locally there in Vermont, I'm assuming, as cinders,</p> <p>7 correct?</p> <p>8 MR. PROST: Object to form.</p> <p>9 A. That's what it says.</p> <p>10 Q. (By Ms. O'Dell) And we would agree,</p> <p>11 Mr. Downey, that amphibole minerals can be</p> <p>12 asbestos, such as tremolite, actinolite and other</p> <p>13 types of amphiboles, true?</p> <p>14 A. Generally speaking, amphiboles is a very</p> <p>15 broad family of minerals that are quite common in</p> <p>16 the earth's crust.</p> <p>17 Q. That's not my question. I move to</p> <p>18 strike the answer.</p> <p>19 I'm just asking if asbestos that I listed,</p> <p>20 tremolite, actinolite being two, are also part of</p> <p>21 the amphibole minerals.</p> <p>22 MR. PROST: Object to form.</p> <p>23 Q. (By Ms. O'Dell) True?</p> <p>24 A. Tremolite and actinolite are amphibole</p> <p>25 minerals, yes. They occur --</p>	<p>1 asking you to instruct your client -- he can answer</p> <p>2 my question. I'm going to give him a chance, and</p> <p>3 I'm going to be very cordial, but he should answer</p> <p>4 my question and . . .</p> <p>5 MR. PROST: Sometimes I think a question</p> <p>6 can't be answered with a simple yes or no, the way</p> <p>7 you want it to be answered. And so I think the</p> <p>8 witness was honestly trying to answer it in a way</p> <p>9 that gave it full and honest context. So I'm going</p> <p>10 to say -- I'm not going to tell him to limit his</p> <p>11 response if he feels like he needs to answer it</p> <p>12 honestly. I'm not saying to not answer the --</p> <p>13 MS. O'DELL: If I have to ask the</p> <p>14 question -- to be fair, if I ask the question if</p> <p>15 actinolite and tremolite asbestos are amphibole</p> <p>16 minerals, that's an easy "yes." I'm not being</p> <p>17 tricky. That's an easy "yes." So anyway, let's --</p> <p>18 I'll move on.</p> <p>19 MR. PROST: Well, that's fair, but I think</p> <p>20 you asked him a different question than that, but</p> <p>21 you're right. Let's go on.</p> <p>22 Q. (By Ms. O'Dell) Okay. This is a</p> <p>23 sketch --</p> <p>24 THE WITNESS: Can you just refill my water?</p> <p>25 MR. PROST: Sure.</p>

41 (Pages 158 to 161)

Patrick Downey

<p style="text-align: right;">Page 162</p> <p>1 Q. (By Ms. O'Dell) -- of part of the -- of 2 sort of a rough sketch, it looks like, of a talc 3 deposit in Vermont; do you see that? And it's 4 depicting schist, right, sort of on the outer walls 5 here? That's schist, right, as you see? And I'm 6 doing a poor job with my highlighter coloring, but 7 what I've marked is schist, correct? 8 A. Can you blow it up? 9 Q. Yeah. Better? Fair? That's what -- 10 what I've colored is schist, right? 11 MR. PROST: Object to form; foundation, with 12 this sketch. 13 A. This, I think, is the first time I've 14 seen the sketch. It lists schist on the edges. It 15 doesn't have any arrows, you know, pointing over 16 there to the zones like he does for other examples, 17 so I don't know. 18 Q. (By Ms. O'Dell) All right. Fair 19 enough. 20 They go on to talk about the "deleterious 21 minerals present in the bodies" at the bottom of 22 the page; do you see that? 23 "Deleterious minerals present in the 24 bodies" -- and we're talking about Vermont talc ore 25 bodies -- "include arsenic sulphides, metallic</p>	<p style="text-align: right;">Page 164</p> <p>1 nonresponsive. 2 Q. (By Ms. O'Dell) Fibrous tremolite is 3 considered to be an asbestiform mineral, true? 4 MR. PROST: Object to form. And I think his 5 answer was responsive. This move to strike as 6 nonresponsive, as my understanding of the 7 deposition guidelines, is not a proper thing to say 8 at the deposition. 9 Q. (By Ms. O'Dell) True, Mr. Downey? 10 A. I forgot your question. I'm sorry. 11 Q. Okay. I'll go back. 12 Fibrous tremolite is considered to be an 13 asbestiform mineral, true? 14 MR. PROST: Object to form. 15 A. Asbestiform, or asbestos, are the 16 elongate flexible separable high-tensile-strength 17 chemically and thermally resistant -- if you want 18 to call them fibers at that point, but they need to 19 meet morphologic characteristics, not just a 20 definition of a fiber based on certain length or 21 diameter criterion. For it to be asbestos, 22 tremolite asbestos, it needs to also exhibit the 23 morphologic characteristics that are actually 24 asbestos. 25 Q. (By Ms. O'Dell) Well, assume that</p>
<p style="text-align: right;">Page 163</p> <p>1 arsenates, iron and fibrous minerals, principally 2 tremolite and actinolite"; did I read that 3 correctly? 4 A. Yes. 5 Q. And so the amphibole minerals that are 6 present -- some of the deleterious source of the 7 amphibole minerals present are fibrous tremolite 8 and actinolite. And those are asbestos, correct? 9 MR. PROST: Object to form. 10 A. That's not my understanding. 11 Q. (By Ms. O'Dell) Fibrous tremolite and 12 fibrous actinolite are considered asbestos, true? 13 MR. PROST: Object to form. 14 A. Not always. 15 Q. (By Ms. O'Dell) When they're fibrous, 16 they are generally considered to be asbestos, fair? 17 MR. PROST: Object to form. 18 A. The inclusion of the word "fiber" or 19 "fibrous" in the definition of what was asbestos, 20 it led to a lot of ambiguities and misunderstanding 21 between geologists and mineralogists and others. 22 And by itself, "fibrous," without other 23 morphological mineral logic criteria, doesn't add 24 meaning to the description. 25 MS. O'DELL: Move to strike as</p>	<p style="text-align: right;">Page 165</p> <p>1 whatever characteristics you have in mind are 2 met -- and I don't know what those are, and I'm not 3 asking you because I'm going to ask -- or somebody 4 on my -- on the Plaintiffs' Steering Committee will 5 ask Miss Pier about those characteristics. 6 But assuming that those characteristics are 7 met, fibrous tremolite is asbestos, true? 8 MR. PROST: Object to form. 9 Q. (By Ms. O'Dell) I'm not trying to be 10 tricky. It's a type of asbestos. You list it on 11 your chart in Exhibit 5. So, true? 12 MR. PROST: Object to form. And it's 13 getting repetitive. You're asking him to make a 14 blanket statement. He said he can't. He's 15 answered the question. 16 MS. O'DELL: He hasn't answered my question. 17 MR. PROST: Well, you asked him whether 18 fibrous tremolite was asbestiform. And he's saying 19 not necessarily. There's all these other 20 characteristics that he said for you. That's his 21 answer. 22 MS. O'DELL: All right. Fair enough. 23 Q. (By Ms. O'Dell) You say not 24 necessarily. If it says -- as fibrous tremolite, 25 it's not necessarily asbestos; is that your</p>

42 (Pages 162 to 165)

Patrick Downey

Page 166	Page 168
<p>1 position? That's what your counsel said. I mean, 2 if that's a good summary, I want to know that. 3 A. I don't think that that's a good 4 summary, because in order to identify it and 5 describe it as asbestos, we need to use careful 6 language. And if it's the asbestos variety of 7 tremolite that exhibits those morphologic 8 characteristics of elongate fibers that are 9 separable, that are chemically and thermally 10 resistant, they're fibrile bundles that are 11 flexible, those aspects -- and Julie Pier can talk 12 more about the morphologic characteristics, but 13 they need to exhibit -- the mineral needs to 14 exhibit those characteristics in order to be 15 tremolite asbestos. 16 And the careful use of the language is not 17 to just call it tremolite, but actually to say, in 18 that form with those mineral morphologic 19 characteristics, that habit, that that is tremolite 20 asbestos. 21 Q. Okay. 22 MR. PROST: And when there's an appropriate 23 to time for you, if we could take a break pretty 24 soon. I think we've been going for a while. 25 MS. O'DELL: Okay. Let me get through with</p>	<p>1 it's also true in relation to the Hammondsville, 2 Hamm and Rainbow mines that neither tremolite or 3 chrysotile has been found in those mines? 4 MR. PROST: Object to form. 5 A. I'm not aware of those being found in 6 those other mines. 7 Q. (By Ms. O'Dell) And in relation to the 8 four mines that sourced J&J talc -- Hammondsville, 9 Hamm open pit, Rainbow and Argonaut -- is it your 10 testimony, on behalf of Imerys, that actinolite 11 asbestos has never been found in any of those 12 mines? 13 MR. PROST: Object to form. 14 A. That's my understanding. 15 Q. (By Ms. O'Dell) Okay. All right. Let 16 me ask you to turn to page 26. We're still on 17 Exhibit 11. 18 MR. PROST: Is now not a good time to take a 19 short break? 20 MR. SILVER: Let her finish the document. 21 MR. PROST: Oh, if you want to finish the 22 document, that's fine if you want to do that. 23 MS. O'DELL: Yeah. That'd be helpful if we 24 could do that. 25 MR. PROST: Sure.</p>
Page 167	Page 169
<p>1 this. 2 Q. (By Ms. O'Dell) So in regard to the 3 sentence I just read, it relates to the deleterious 4 minerals present in Vermont bodies, giving it 5 context, principally -- excuse me. Back up. 6 "...fibrous minerals, principally tremolite 7 and actinolite," you're saying that's not 8 necessarily asbestos, but it's also equally true it 9 could be asbestos. 10 MR. PROST: Object to form. 11 Q. (By Ms. O'Dell) Fair? 12 A. Not with respect to. That doesn't 13 conform with our understanding. 14 Q. You're saying, on behalf of Imerys 15 categorically, there has never been tremolite 16 asbestos in the ore deposit? 17 MR. PROST: Object to form. 18 A. Correct. 19 Q. (By Ms. O'Dell) Are you saying, on 20 behalf of the company, under oath, that chrysotile 21 asbestos has never been found at Argonaut? 22 MR. PROST: Object to form. 23 A. That's correct. That's my 24 understanding. 25 Q. (By Ms. O'Dell) And would you say that</p>	<p>1 Q. (By Ms. O'Dell) On page 26, at the top, 2 it talks about "Arsenic sulphides and arsenates 3 encapsulated in talc grains are found in varying 4 degrees from deposit to deposit and appear to be 5 concentrated in the structurally distributed zones, 6 shears and fractures according to the Cyprus 7 staff"; did I read that correctly? 8 A. Yes. 9 Q. And is that consistent with your 10 understanding that arsenic occurred at high levels 11 in certain portions of the mines at Vermont? 12 MR. PROST: Object to form. 13 A. Generally speaking, it's my 14 understanding that arsenic locally could be at an 15 elevated value, but generally speaking, the talc 16 source for Johnson & Johnson was low arsenic ores 17 that had been identified and designated as such. 18 Q. (By Ms. O'Dell) It goes on to say, 19 (read as:) Fibrous amphiboles are noted in 20 footwall and hanging wall zones and in grey talcs 21 near these areas; they are found within and 22 bordering some of the "cinder" zones and at the 23 contact zone with serpentine; did I read that 24 correctly? 25 A. That's what it says.</p>

Patrick Downey

Page 170	Page 172
<p>1 Q. And the contact zone that's being 2 referred to there, Mr. Downey, is the contact zone 3 between serpentine and talc ore, correct? 4 MR. PROST: Object to form. 5 A. I'm not sure without spending time 6 reading the document to understand what the author 7 meant. 8 Q. (By Ms. O'Dell) Well, I'll note that 9 cinder is located -- this is what this is saying, 10 as I appreciate it, and correct me if I'm wrong. 11 Cinder is at the contact between serpentine 12 and talc. We will look at some other maps, and 13 that's what I understand that sentence to say. 14 Do you have any reason to dispute that? 15 MR. PROST: Object to form. 16 A. Not without spending time looking at 17 more things, other things. 18 Q. (By Ms. O'Dell) Let me ask you to turn 19 to page 29. And you'll see this section relates to 20 the Hamm Mine; do you see that? 21 A. The bottom couple paragraphs? 22 Q. Yes. And it goes on to the next page. 23 And I'll direct you to the second paragraph. 24 It says, "The Hamm Mine has established 25 problems with high arsenic zones and areas with</p>	<p>1 Q. Okay. Then, if you'll turn to page 34, 2 you'll see there's a section that relates it 3 Argonaut. And it says, "The most important reserve 4 on the Ludlow trend is the Argonaut where the 5 Argonaut Main ore body open pit, a 6 three-million-ton deposit of medium (greater than 7 65 to 75 GEB)" -- which that describes brightness, 8 right? 9 A. Yes. 10 Q. -- "brightness reserve," and then it 11 goes on to say, (as read:) has been supplanted by 12 the development of Argonaut East ore body due to 13 the high stripping ratio and high incidence of 14 fiber-bearing zones encountered in the main ore 15 body; did I read that correctly? 16 A. You forgot "possibly." 17 Q. Okay. 18 MR. PROST: Just to be clear on that one, 19 would you mind reading that with the word 20 "possibly" inserted where it was, just so it's 21 clear? 22 MS. O'DELL: Yeah, yeah. I'll be happy to. 23 Q. (By Ms. O'Dell) Okay. I'm going to go 24 back. This is talking about the Argonaut Main ore 25 body and juxtaposing against the Argonaut East ore</p>
Page 171	Page 173
<p>1 fibrous actinolite, but is mined for its relatively 2 high talc content and high brightness ores"; did I 3 read that correctly? 4 A. That's what it says. 5 Q. And if you'll go to page 32, you'll see 6 it's referring to the Ludlow Mines. And it says, 7 in the first paragraph, bottom, "Most" -- referring 8 to the Ludlow mines, "Most have significant arsenic 9 and fibre bearing areas which must be excluded." 10 And then it talks about the Rainbow Mine. 11 And that's one of the mines that was used to source 12 J&J talc, correct? 13 A. For a period of time, yes. 14 Q. And if you'll keep going further, 15 there's a map that gives sort of a layout, it's not 16 detailed, but a layout of generally where the mines 17 are located. 18 And is this map generally consistent with 19 your understanding, having been there several 20 times, in terms of where the mines are generally 21 located? 22 A. Generally speaking, yes. 23 Q. Okay. 24 A. I think that the East Argonaut and Main 25 are mislabeled.</p>	<p>1 body, fair? 2 A. I haven't had time to read everything. 3 There's a description of Argonaut Main and Argonaut 4 East. 5 Q. Okay. It says, "The most important 6 reserve on the Ludlow trend is the Argonaut where 7 the Argonaut Main ore body open pit, a 8 three-million-ton deposit of medium (greater than 9 65 to 75 GEB) brightness reserve, has been 10 supplanted by the development of the Argonaut East 11 ore body due to the high stripping ratio and 12 possibly high incidence of fibre bearing zones 13 encountered at the main ore body"; did I read that 14 correctly now? 15 A. Yes. 16 Q. And this document, if you'll keep going 17 further, is on page Bates number ending 389; do you 18 see that? We don't have a date on the overall 19 exhibit, the overall memo, that Mr. Munro wrote, 20 but at least it's after February 14th, 1992, which 21 is the date of the this interoffice correspondence 22 that's attached to the memo, correct? 23 MR. PROST: Object to form. 24 A. Are you representing that this was 25 attached to the original document?</p>

44 (Pages 170 to 173)

Patrick Downey

Page 174	Page 176
<p>1 Q. (By Ms. O'Dell) Yes.</p> <p>2 A. I can't tell one way or the other.</p> <p>3 Q. So it appears that this document was one</p> <p>4 of the pieces of information that was provided to</p> <p>5 Rio Tinto as part of the sales process -- excuse</p> <p>6 me -- as part of the purchase -- stock-purchase</p> <p>7 process in 1992 or shortly thereafter.</p> <p>8 MR. PROST: Object to form.</p> <p>9 Q. (By Ms. O'Dell) Fair?</p> <p>10 A. It might be dated in that time period,</p> <p>11 but, again, I don't recall who R.C. Munro worked</p> <p>12 for. I've seen a different document with his name</p> <p>13 on it in other production.</p> <p>14 MS. O'DELL: Okay. All right. Thank you,</p> <p>15 Mr. Downey. We can take a short break.</p> <p>16 MR. PROST: Okay. Thank you.</p> <p>17 VIDEOGRAPHER: Off the record at 3:09.</p> <p>18 (Recess taken.)</p> <p>19 VIDEOGRAPHER: We're back on the record at</p> <p>20 3:26.</p> <p>21 Q. (By Ms. O'Dell) Mr. Downey, let me show</p> <p>22 you what I've marked as Exhibit Number 12.</p> <p>23 (Exhibit 12 was marked for identification.)</p> <p>24 Q. (By Ms. O'Dell) And this is a document</p> <p>25 that was produced to us in litigation. Its Bates</p>	<p>1 sulphides (arsenopyrite) are, with their alteration</p> <p>2 products, present in many of the talc-carbonate</p> <p>3 schist ore zones in the Vermont area"; did I read</p> <p>4 that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. It says, "Total arsenic, as analyzed in</p> <p>7 the Ludlow Rainbow deposit, averages generally less</p> <p>8 than 100 parts per million but with some small</p> <p>9 zones in excess of 1000 parts per million. No</p> <p>10 apparent major effort is underway to regularly</p> <p>11 monitor or completely assess the total arsenic</p> <p>12 content of ores, tailing solids and wastes although</p> <p>13 the distribution of sulphides and arsenates in talc</p> <p>14 ore system is generally understood"; did I read</p> <p>15 that correctly?</p> <p>16 A. That's what it says.</p> <p>17 Q. Mr. Munro is writing to those -- his</p> <p>18 distribution list, and we have some idea of who</p> <p>19 that is. If you'll turn to page 3, it includes</p> <p>20 R.J. Kerstetter; G.L. Toll; G.B. Lawson, BCL;</p> <p>21 J. Paulsen; and P. Moreau, Talc de Luzenac. And</p> <p>22 that should be Philippe Moreau, correct?</p> <p>23 A. It will seem so.</p> <p>24 Q. Are you familiar with any of the other</p> <p>25 individuals listed on the distribution list?</p>
Page 175	Page 177
<p>1 number is IMERYYS 219720.</p> <p>2 Have you seen this document before?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Did you review it in preparation for</p> <p>5 your deposition today?</p> <p>6 A. No.</p> <p>7 Q. And this is a memo dated March 25th,</p> <p>8 1992, correct?</p> <p>9 A. Yes, it is.</p> <p>10 Q. And the author is R.C. Munro. And he's</p> <p>11 the same person -- gentleman, I suppose -- that</p> <p>12 wrote the previous exhibit we were looking at</p> <p>13 before the break, Exhibit Number -- I believe it</p> <p>14 was number 10.</p> <p>15 A. Eleven.</p> <p>16 Q. Eleven. Thank you.</p> <p>17 And the title of this document, this</p> <p>18 interoffice correspondence, is "Cyprus Ore</p> <p>19 Reserves - Arsenic and Tremolite"; do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And this document relates to the Cyprus</p> <p>22 talc ore reserves particularly in Vermont?</p> <p>23 A. That's what it says.</p> <p>24 Q. And it has a -- the first section is</p> <p>25 related to arsenic. And it says, "Arsenic iron</p>	<p>1 A. No.</p> <p>2 Q. Mr. Munro is writing this memorandum and</p> <p>3 he's pointing out issues regarding arsenic and</p> <p>4 tremolite in the Cyprus ore reserves, correct?</p> <p>5 A. Generally, yes. I haven't read the</p> <p>6 whole thing, so I don't know what he's saying, but</p> <p>7 that's the topic matter.</p> <p>8 Q. And if you'll see in subsection --</p> <p>9 excuse me, paragraph two under "Arsenic," it says,</p> <p>10 "In near surface weathering zones, crushed rock,</p> <p>11 stock piles and mine working areas, the arsenic</p> <p>12 sulphides (above) convert in part to the more</p> <p>13 soluble arsenates, for example, the hydrous nickel</p> <p>14 arsenate, annabergite," which is one of the</p> <p>15 arsenates; do you see that?</p> <p>16 A. That's what it says.</p> <p>17 Q. It goes on to say, "Soluble arsenic is</p> <p>18 measured in cores, ore samples, mill feed, product</p> <p>19 and tailings. Soluble arsenic content is monitored</p> <p>20 and governed under EPA/OSHA regulations," correct?</p> <p>21 A. That's what it says, yes.</p> <p>22 Q. And arsenic at high levels is considered</p> <p>23 to be a carcinogen by the World Health</p> <p>24 Organization, true?</p> <p>25 A. It's my general understanding that</p>

45 (Pages 174 to 177)

Patrick Downey

Page 178	Page 180
<p>1 arsenic has been identified as a carcinogen. I 2 don't know at what exposure level. 3 Q. Turning to page 2, Mr. Munro writes, "To 4 me, there also seems to be the overall risk of 5 continuing conversion of arsenic in sulfide to more 6 soluble arsenates in some stockpiles, waste, and 7 solid tailings as acid, water, air and time work on 8 them." 9 Is Mr. Munro saying that exposure of arsenic 10 sulfide to rain, to air, to time, to acid can 11 result in the arsenic sulfide converting into more 12 soluble arsenates? 13 MR. PROST: Object to form. 14 A. The paragraph says what it says. 15 Q. (By Ms. O'Dell) Do you know that to be 16 true, that if arsenic sulfides are exposed to rain, 17 acid, air, then they can convert to soluble 18 arsenic? 19 A. Generally speaking, it's my 20 understanding that some sulfide minerals can become 21 soluble, yes, but under very specific conditions. 22 Q. It goes on to talk about tremolite; do 23 you see that? Are you with me, Mr. Downey? 24 A. Yes. 25 Q. He says, "The other serious</p>	<p>1 Q. "Talc de Luzenac personnel are aware of 2 the situation and Philippe Moreau is quietly 3 working to identify the reality and magnitude of 4 the problem." 5 Are you aware if Mr. Moreau provided any 6 information about the concerns regarding the 7 presence of tremolite in Vermont talc to Rio Tinto? 8 MR. PROST: Object to form. 9 A. I don't know. 10 Q. (By Ms. O'Dell) Have you seen any 11 documents where Mr. Moreau has addressed the issue 12 of tremolite in asbestos fibers in Vermont talc? 13 A. I don't recall that I've seen any 14 documents. 15 Q. (As read:) Vermont talcs are derived 16 from altered serpentine - a natural host for 17 asbestiform minerals. There is certainly viable 18 tremolite and actinolite in specific zones of the 19 Vermont deposits. Fibrous tremolite was identified 20 by the writer -- meaning Mr. Moreau -- in exposures 21 and cores at East Argonaut and the Black Bear 22 Mines. Cyprus staff report past tremolite from the 23 Hammondsville and Clifton deposits; did I read that 24 correctly? 25 A. Mostly.</p>
Page 179	Page 181
<p>1 mineralogical contaminant in the talc ores of 2 Vermont is the fibrous variety of the amphibole 3 minerals, tremolite and actinolite (hydrous calcium 4 iron-magnesium silicates) which have been 5 classified as asbestiform minerals by OSHA and 6 EPA"; did I read that correctly? 7 A. Yes. 8 Q. Next paragraph, "As a result, all 9 tremolite, the fibrous varieties of all amphiboles 10 and chrysotile asbestos in talc ores are a source 11 of great concern to all talc producers and 12 especially to marketers of cosmetic products," 13 true? 14 A. That's what it says. 15 Q. "Cyprus claims that there are no fibres 16 in their cosmetic talc products and they work to 17 rigorously ensure this. However, a recent paper 18 published by Rutgers University worker, Alice 19 Blount, suggests the presence of fibre in several 20 cosmetic talcs, some of which might have come from 21 Cyprus West Windsor material, which is a source of 22 great concern to Cyprus management and potentially 23 to their principal customer, Johnson & Johnson"; 24 did I read that correctly? 25 A. Yes.</p>	<p>1 Q. Okay. And East Argonaut and 2 Hammondsville mines are ones that were used to 3 source J&J talc, true? 4 A. Yes. 5 Q. "Tremolite in these deposits is 6 encountered in the contact zones between the talc 7 and the surrounding schist"; did I read that 8 correctly? 9 A. Yes. 10 Q. That goes back to the discussion we had 11 before regarding Exhibit Number 11 in relation to 12 contact zones between serpentines or schist and 13 talc; do you remember that discussion? 14 A. I recall the discussion. 15 Q. It says -- and pick up the sentence -- 16 (as read:) the surrounding schist; in the "gray 17 talcs" in the vicinity of the contacts; and 18 associated with the chlorite/amphibole waste zones 19 within the talc ores that are locally termed 20 "cinders." 21 So according to Mr. Munro, 22 "chlorite/amphibole waste zones within the talc 23 ores," that's the definition of the term "cinder"; 24 do you see that, sir? 25 MR. PROST: Object to form.</p>

46 (Pages 178 to 181)

Patrick Downey

Page 182	Page 184
<p>1 A. That's what he defined as "cinders." 2 Q. (By Ms. O'Dell) And he's referring to 3 it as the local definition of "cinder," fair? 4 A. That's what it says. 5 Q. Mr. Munro goes on to talk about Montana, 6 California and Alpine, Alabama -- very near my 7 home -- but we don't need to talk about those, so 8 I'm going to ask you to put that aside. 9 And you had never seen this document before 10 you -- your deposition today; is that correct? 11 A. I don't believe I have. As I mentioned, 12 I had seen another Munro document. Can't tell if 13 that's the one or not. 14 Q. Let me show you what I'm marking as 15 Exhibit 13, Mr. Downey and ask you if you've seen 16 this document before. 17 (Exhibit 13 was marked for identification.) 18 A. (Document reviewed.) No, I haven't seen 19 it. 20 Q. It is Bates number Imerys 436951. And 21 it appears to be Imerys' copy of a folder. It's 22 page 1. You'll see it says "Mine Data" on what 23 appears to be on the tab of a folder. And you open 24 it up and there's pictures of various mines, East 25 Argonaut, the Argonaut Mine. These are hard to</p>	<p>1 uncommon to find summaries like this that describe 2 the ore body of a particular mine so that it can be 3 evaluated, business plans can take place, 4 et cetera, fair? 5 A. Generally speaking, but I've not seen a 6 document that looks like this before. 7 Q. Okay. Well, take a look, just for -- 8 direct our discussion. See if I can make that a 9 little bigger. The first sort of box there that 10 I'm looking at on page Bates ending 54, that's 11 "Argonaut (EOB)"; do you see that? 12 A. Yes. 13 Q. And that's East Argonaut Mine? 14 A. I don't know. 15 Q. All right. The date on it is 16 September 1992. 17 It's fair to say that there was Argonaut 18 Main body, and then there was another mine that was 19 Argonaut East, true? 20 A. There was the Argonaut Main pit and the 21 Argonaut East pit. 22 Q. Yes. And if you look at this and you 23 juxtapose these two tables here, you'll see that 24 there's -- this is EOB, and that seems to be East. 25 And then there's Argonaut tables in the MOB, and</p>
Page 183	Page 185
<p>1 see, but that's -- labeled them, appears to us. 2 On page 2, if you keep flipping over, you'll 3 see the view -- south view of the Argonaut Mine and 4 aerial photo. And on page 4 of the document, the 5 Bates number ending 54, you'll see a table there; 6 do you see that. 7 A. This one? 8 Q. Yes. Ending in 54? Some of them look 9 alike, so -- 10 A. Yes. 11 Q. -- make sure. Okay. Great. 12 So this appears to be a document that 13 provides information regarding the mines -- the 14 Vermont mines, you know, that they provided 15 pictures for; do you see that? East Argonaut, 16 Argonaut Main body, Hammondsville, and so forth? 17 A. I'm trying to get oriented with the 18 document, so . . . 19 Q. Okay. And specifically, as you're 20 getting oriented, I'm going to ask you questions 21 about this Ore Characteristic Summary Sheet, which 22 appears to be a summary description of the ore body 23 at Argonaut. 24 In your experience in the mining industry, 25 over, you know, some decades, Mr. Downey, it's not</p>	<p>1 that seems to be the Main body; is that a fair 2 interpretation? 3 A. I don't know what "EOB" or "MOB" mean. 4 I haven't seen those acronyms before. You're 5 asking me to speculate on what they mean. 6 Q. And just so we can assure yourself that 7 this is not a document -- this is by a third party. 8 This is a Luzenac document. If you'll look, it 9 says, "File: Company: Luzenac America Company" -- 10 or it says "Company" again -- "Vermont Operations." 11 And then it says, "Product: Tale." I don't know 12 what it says in -- I can't see that very well in 13 terms of what the plant is. 14 A. It's scratched out. 15 Q. Could be "Argonaut" written in, but I 16 can't be sure of that at the moment, so -- but 17 clearly, we're talking about Argonaut, fair? 18 A. The other tables say "Argonaut." 19 Q. And if you'll look, it says, "Ore type" 20 in the "Summary"; do you see that? And then it 21 says -- 22 A. Where? 23 Q. In the table. 24 A. The left table? 25 Q. For "Argonaut (EOB)," yeah. I'm just</p>

47 (Pages 182 to 185)

Patrick Downey

<p style="text-align: right;">Page 186</p> <p>1 going to move left to right, so "Argonaut (EOB)."</p> <p>2 And I'll represent to you that's east, but if you</p> <p>3 disagree with that, let me know.</p> <p>4 "Ore type," do you see that in the table?</p> <p>5 A. Yes.</p> <p>6 Q. And then it also says "Associated</p> <p>7 Minerals"; do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And then under "Associated Minerals" for</p> <p>10 "Ore Type A" there is "Actinolite," true?</p> <p>11 A. That's what it says.</p> <p>12 Q. And for "Ore Type C," it says associated</p> <p>13 minerals is "serpentine"?</p> <p>14 A. That's what it says. I don't know how</p> <p>15 to read this table, though. I'm not familiar with</p> <p>16 those ore types being named.</p> <p>17 Q. Okay. Go down. You'll look below,</p> <p>18 "General Ore Description," "Mineralogy: Mostly</p> <p>19 talc carbonate core zone," appears to be 8 type</p> <p>20 "next to serpentine."</p> <p>21 And if you go down further --</p> <p>22 A. I think that's "B type."</p> <p>23 Q. "B type"? Okay. "(B type) next to</p> <p>24 serpentine."</p> <p>25 "Detrimental Minerals: Arsenic,"</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. And that would include Baby Powder and</p> <p>2 Shower to Shower, true?</p> <p>3 A. Maybe.</p> <p>4 Q. Okay. Certainly, that was the cosmetic</p> <p>5 talc being sold from Argonaut during this time</p> <p>6 period, correct?</p> <p>7 A. The ore for Johnson & Johnson attributes</p> <p>8 was known as 5904 ore type. I don't see 5904</p> <p>9 listed here as one of the ore types.</p> <p>10 Q. It clearly is cosmetic talc, correct?</p> <p>11 Johnson & Johnson talcum-powder products are made</p> <p>12 of cosmetic talc, true?</p> <p>13 A. Yes.</p> <p>14 Q. And there are no specific ore types</p> <p>15 listed here. It's talking generally about the</p> <p>16 types of applications, such as roofing, plastics,</p> <p>17 and then it says "cosmetics," correct?</p> <p>18 A. Under the "Ore Destination" at the</p> <p>19 bottom it says "Ore Destination: Columbian Mill,</p> <p>20 Roofing, Plastics (TC 100)."</p> <p>21 Q. Okay. And in terms of physical</p> <p>22 attributes, it says, "Generally good for all</p> <p>23 products including cosmetics," correct?</p> <p>24 A. That's what it says.</p> <p>25 Q. Let me ask you to turn to page Bates</p>
<p style="text-align: right;">Page 187</p> <p>1 "actinolite."</p> <p>2 A. "Arsenic clays actinolite."</p> <p>3 Q. All right. We'll add "clays" in there.</p> <p>4 "Detrimental Minerals: Arsenic, clays" and</p> <p>5 "actinolite."</p> <p>6 And if you go down further, it says "Ore</p> <p>7 Destination: Roofing, TC 100" and then "some</p> <p>8 cosmetic"; did I read that correctly?</p> <p>9 A. That's what it says.</p> <p>10 Q. Okay. Then we'll go over. Look at</p> <p>11 "Argonaut (MOB)," which I believe to mean the main</p> <p>12 Argonaut Mine; do you see that?</p> <p>13 A. I see "Argonaut (MOB)," yes.</p> <p>14 Q. And in "Argonaut Main," got "Ore Type</p> <p>15 A," "B" and "C," and you've got "Associated</p> <p>16 Minerals," and it says "Mica" and "Actinolite."</p> <p>17 A. Yes.</p> <p>18 Q. And below, it says, "Physical</p> <p>19 Attributes: Very hot insol," which means</p> <p>20 insolubles, right?</p> <p>21 A. Yes.</p> <p>22 Q. "...bright, flaky ore, generally good</p> <p>23 for all products including cosmetics," did I read</p> <p>24 that correctly?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 189</p> <p>1 number 436961. I want to ask you some questions</p> <p>2 about the Hamm Mine.</p> <p>3 And it's dated September 1992; do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. And it's got "Ore Type," list A, B and</p> <p>7 C. And for associated minerals, it has actinolite</p> <p>8 and serpentine, correct?</p> <p>9 A. That's what it says.</p> <p>10 Q. And it says, "Physical Attributes" --</p> <p>11 let me go back up. Sorry.</p> <p>12 (Read as:) Mineralogy: Typical talc</p> <p>13 carbonate associated with serpentine. The rim of</p> <p>14 the foliated talc occurs mostly on the east but</p> <p>15 also high aspect ratio (flaky) talc is found the</p> <p>16 pit in the bottom next to the cinders, okay?</p> <p>17 (Read as:) Physical Attributes: The ore</p> <p>18 deposit is on the north and -- excuse me -- is on</p> <p>19 the north end of a large serpentine mass. Included</p> <p>20 amphibolite and chlorite schists are removed by</p> <p>21 selected mining. The ore is very bright and flaky</p> <p>22 and makes a good source for both dry ground and</p> <p>23 floated products; did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. And then detrimental minerals, arsenic,</p>

48 (Pages 186 to 189)

Patrick Downey

Page 190	Page 192
<p>1 actinolite and chlorite. 2 "In-Pit Contaminants: Serpentine, chlorite, 3 mica (schist cinders)." 4 And in terms of destination, it says -- it 5 talks about the Chester Mill. And then it says, 6 "and float feed for West Windsor products and 7 Johnson plant." 8 West Windsor products would be 9 Johnson & Johnson talcum-powder products, true? 10 A. It might, depending on time. 11 Q. In the 1992 time frame, West Windsor was 12 the location where Johnson's talcum-powder products 13 were processed, true? 14 A. That's correct. 15 Q. You can put that aside. I'm going to 16 show you what I've marked as Exhibit Number 14, 17 Mr. Downey. 18 (Exhibit 14 was marked for identification.) 19 MS. O'DELL: It's JNJ 000245002. And that 20 is Exhibit 14. 21 Q. (By Ms. O'Dell) Have you seen this 22 document before, Mr. Downey? 23 A. This appears to be a Johnson & Johnson 24 document. It's an inch and a half thick. I don't 25 know if I've seen this or not.</p>	<p>1 1989 when Cyprus would have had ownership of the 2 Vermont talc mines, did J&J audit the operations in 3 Vermont? 4 MR. PROST: Object to form. 5 A. I believe so. I don't know how 6 frequently, though. 7 Q. (By Ms. O'Dell) Do you know what the 8 criteria J&J used to conduct those audits? 9 A. Not specifically, no. 10 Q. Do you know if there were any reports 11 generated from Johnson & Johnson initiated audits 12 of the operations there in Vermont? 13 A. Initiated by whom? 14 Q. Johnson & Johnson or somebody they hired 15 to act on their behalf. 16 A. I'm aware of at least one audit-type 17 report from the late 1990s that I've seen. 18 Q. And what's your understanding of that 19 particular report? 20 A. It was about the level of microbials in 21 the product. 22 Q. And what was the issue with the 23 microbials? 24 A. There were -- there was a silo of 25 material that had been quarantined. They were</p>
Page 191	Page 193
<p>1 Q. And it relates to the Hammondsville 2 Mine, correct? 3 A. That's what it says, yes. 4 Q. And it is dated 1970? 5 A. That's correct. 6 Q. And the subject is "Geological Audit, 7 Windsor Minerals, File Number 124." And it says at 8 the bottom, "The attached report completes our work 9 on the nature and magnitude of our ore body in 10 Vermont from which we manufacture Baby Powder 11 talc," signed Bill Ashton, or W. Ashton, known as 12 Bill Ashton. 13 Have you heard of Bill Ashton before? 14 A. I think I've seen his name. 15 Q. Did you ever have the opportunity to 16 meet Mr. Ashton? 17 A. No, I don't believe so. Is he still 18 alive? 19 Q. I believe he's deceased. 20 A. Okay. 21 Q. Now, in relation to this document, it 22 was prepared for J&J Research Center, and it 23 appears to be, as it indicated on the front, an 24 audit of the mines in Vermont. 25 Let me ask you this: From -- beginning in</p>	<p>1 following the regular process. The material was 2 quarantined -- it was sampled. A deposit sample 3 was obtained for the silo, or silos, and while 4 awaiting for the microbial analyses to come back, 5 that material was quarantined. It was not shipped. 6 And the microbial count came back in exceedance of 7 the specification. So that instigated an audit by 8 Johnson & Johnson. 9 Q. Turning back to Exhibit 14, Mr. Downey, 10 you'll see -- if you turn to the table of contents 11 on page Bates ending 4, it's about three pages into 12 the document. Then it goes through various aspects 13 of the audit. And you'll see from the table, 14 starting tables at the bottom of the page, that 15 there are petrographic classifications and analyses 16 of samples taken from drill cores; do you see that? 17 And it goes onto -- over onto the next page. And 18 it lists the drill cores that are being sampled. 19 And we're going to get to some of the results. 20 But, I mean, drill cores are undertaken for 21 purposes of understanding the size and contours of 22 an ore body, fair? 23 A. Generally speaking, drill cores are used 24 to obtain geologic information that includes the 25 extents or the limits of the ore body. That's what</p>

49 (Pages 190 to 193)

Patrick Downey

Page 194	Page 196
<p>1 you're -- that's one thing you're trying to find.</p> <p>2 Q. You're also trying to find out if there</p> <p>3 are accessory minerals in the deposit that you need</p> <p>4 to be concerned about in the mining process, fair?</p> <p>5 A. You need to understand the overall</p> <p>6 geology of the deposit as it relates to what you're</p> <p>7 trying to do.</p> <p>8 Q. That's right, because the ore -- as</p> <p>9 geologists, as I understand it, think of ore,</p> <p>10 that's the mineral that you're going to extract and</p> <p>11 sell for purposes of a profit, right? That's what</p> <p>12 you're selling to a customer, is the ore.</p> <p>13 MR. PROST: Object to form.</p> <p>14 Q. (By Ms. O'Dell) Fair?</p> <p>15 A. It can be. You know, there are other</p> <p>16 processes, you know, downstream that occur,</p> <p>17 beneficiation and other things.</p> <p>18 Q. Of course. And -- but just talking</p> <p>19 generally, you're looking to define the ore body</p> <p>20 when you're doing drilling, and particularly</p> <p>21 drilling cores, and then you're looking to identify</p> <p>22 any other geological information that would be</p> <p>23 relevant to your mining of that particular ore</p> <p>24 body, fair?</p> <p>25 A. Generally, yes.</p>	<p>1 200 feet, 160 feet. It's quite deep into the</p> <p>2 earth, generally speaking?</p> <p>3 A. It depends on where you're targeting,</p> <p>4 but it can be several hundred feet.</p> <p>5 Q. Right. And so they may be do ten feet</p> <p>6 at a time, but oft times, you're really looking to</p> <p>7 see what is present quite a distance into the</p> <p>8 earth, fair?</p> <p>9 MR. PROST: Object to form.</p> <p>10 A. You're using the drill and extracting</p> <p>11 the cores to gain information about the rock that</p> <p>12 you encounter.</p> <p>13 Q. (By Ms. O'Dell) And cores are something</p> <p>14 that, for a particular deposit, is -- one, it's an</p> <p>15 expensive endeavor to drill for cores?</p> <p>16 A. Generally, yes. As opposed to other</p> <p>17 drilling methods, it's expensive.</p> <p>18 Q. Yes.</p> <p>19 And the cores are something that are saved</p> <p>20 for historical reference for that particular</p> <p>21 mine --</p> <p>22 MR. PROST: Object to form.</p> <p>23 Q. (By Ms. O'Dell) -- in most instances?</p> <p>24 A. I mean, you're talking generally about</p> <p>25 mines. Most core -- well, I can't say "most core."</p>
Page 195	Page 197
<p>1 Q. And so I'm going to ask you, just in</p> <p>2 summary fashion, explain for the jury what it means</p> <p>3 to drill for core. I mean, I can give you my sort</p> <p>4 of really rudimentary knowledge, which is you</p> <p>5 drill. The drill has essentially a cylinder. And</p> <p>6 that basically -- you pull out of the earth a</p> <p>7 rounded sort of sample of all the material. You</p> <p>8 know, so if you drill 200 feet down, you pull core</p> <p>9 that's 200 feet long, and it's a cylinder of a</p> <p>10 certain diameter, depending on the drill, and</p> <p>11 geologists look at those cores to determine what's</p> <p>12 in the earth at the point of that deposit; is that</p> <p>13 fair?</p> <p>14 A. Close.</p> <p>15 Q. For a nongeologist?</p> <p>16 A. For a nongeologist, I mean --</p> <p>17 Q. Yeah. It's fair, right? It's not as</p> <p>18 accurate as maybe others can do, but that's a fair</p> <p>19 summary, correct?</p> <p>20 A. You're extracting intact rock, generally</p> <p>21 speaking, typically more in ten-foot sections, not</p> <p>22 2700 feet at a time.</p> <p>23 Q. Right.</p> <p>24 A. But, yes.</p> <p>25 Q. But a total drill hole often will end at</p>	<p>1 Core is often saved.</p> <p>2 Q. Yes. And it's something that provides</p> <p>3 mineralogical information, you know, for the</p> <p>4 future. So you could go back to a core that was</p> <p>5 drilled in 1970 and look at it, reference it, and</p> <p>6 if that area's not been mined, you would have</p> <p>7 relevant information for an analysis in 2018, true?</p> <p>8 MR. PROST: Object to form; outside the</p> <p>9 scope.</p> <p>10 A. I don't know about particular relevance.</p> <p>11 To the extent it still existed, it might be useful.</p> <p>12 Q. (By Ms. O'Dell) All right. In this</p> <p>13 instance, looking back at Exhibit Number 14, we're</p> <p>14 looking at a report that looks at cross-sections of</p> <p>15 cores that were drilled in the 1970s. And if</p> <p>16 you'll go to page 5010 -- excuse me, sir, it's</p> <p>17 5010, which is very early in the document. That's</p> <p>18 the Bates number.</p> <p>19 A. Oh, I was thinking 100. I'm sorry.</p> <p>20 Q. Yeah. 5010 is the last four digits of</p> <p>21 the Bates. And this is defined in the scope of</p> <p>22 this particular study. It says it's included an</p> <p>23 examination and a detailed geologic mapping of all</p> <p>24 accessible parts of the Hammondsville Mine. All</p> <p>25 available drill core was examined and the zones</p>

50 (Pages 194 to 197)

Patrick Downey

Page 198	Page 200
<p>1 were split. It says one half was sent to Golden. 2 Excuse me. One half was sent to Golden for 3 mineralogic and mineral assaying and the remainder 4 was placed into core boxes at Windsor; do you see 5 that? 6 A. So these -- it says "chemical assay," 7 not "mineral." 8 Q. Sorry. I was reading ahead. Excuse me. 9 Okay. So this is a study of cores and the 10 review that Johnson & Johnson initiated to look at 11 cores to determine information about the 12 Hammondsville Mine. 13 MS. ZOU: Objection to form. Sorry. Are 14 you done? I didn't mean to interrupt. 15 MS. O'DELL: That's okay. Objection? 16 MS. ZOU: Object to form; outside the scope. 17 MS. O'DELL: Are you taking the position 18 that the Hammondsville Mine is outside the scope of 19 this deposition? 20 MS. ZOU: No. I'm taking the position that 21 Mr. Downey is supposed to testify about the talc 22 that Imerys sold to Johnson & Johnson, and this 23 document's from Windsor Minerals. 24 MS. O'DELL: Okay. But you're not disputing 25 that Imerys sold talc from the Hammondsville Mine?</p>	<p>1 A. Eight? 2 Q. Eight. Eight. You'll see -- 5038 -- 3 you'll see that it says, "In addition, almost forty 4 samples of core material were submitted for 5 thin-section analysis to determine various 6 information about the host rock, the ore, and the 7 origin of the deposit." 8 Before we go into the results of those 9 tests, Mr. Downey, what is a thin section? What 10 does that refer to in relation to analyzing a core 11 sample? 12 MR. PROST: Object to form. 13 A. I think that Julie Pier -- that's a 14 topic more on what she could discuss or describe 15 better than I could. 16 Q. (By Ms. O'Dell) Based on your decades 17 of experience in the mining industry and your 18 education as a geologist, what's your understanding 19 of what "thin-section analysis" means? 20 A. Generally speaking, a thin slice of rock 21 is prepared on a slide that can be viewed under a 22 microscope. That's my general understanding. 23 Q. And it's often reviewed under XRD, 24 correct? 25 MR. PROST: Object to form.</p>
Page 199	Page 201
<p>1 MS. ZOU: I am not disputing that. 2 MS. O'DELL: My objection to form is his 3 interpretation of the document. 4 Q. (By Ms. O'Dell) If you'll turn to the 5 Bates number ending 5020, it says, "Thirty-eight 6 core samples were submitted for thin-section 7 analysis. All but a few" -- 8 A. Where at? 9 Q. At the bottom, sir. 10 A. Okay. 11 Q. Do you see that? 12 "All but a few," "...were from within the 13 ore zone"; do you see that? 14 A. Yes. 15 Q. So that gives further information about 16 the study that's being done on the Hammondsville 17 Mine? 18 MR. PROST: Object to form. 19 Q. (By Ms. O'Dell) And for purposes of 20 saving some time, let me have you turn over to 21 another page that sort of shows the scope of this 22 testing that Johnson & Johnson commissioned. And 23 if you'll look on Bates number ending 5038 -- 24 A. Three what? 25 Q. 5038.</p>	<p>1 A. That's not my understanding. 2 Q. (By Ms. O'Dell) Okay. Turn to Bates 3 number ending 5040, please. Do you see that? 4 A. Where? 5 Q. It's "X-ray Diffraction and Microscopic 6 Data, Diamond Drill Hole 1-67-H"; do you see that? 7 A. Yes. 8 Q. And at the top, it shows the interval. 9 And then, to the right, it has 39 to 41; do 10 you see that? 11 A. Yes. 12 Q. Most often that would mean feet, right, 13 in a thin-section analysis of a core sample? 14 A. That's in -- the interval, there's 15 "feet" in parentheses, so that indicates the units 16 that you're measuring. 17 Q. That's right. 18 And so that would be results -- under 39.0 19 to 41.0 are the results of the samples taken at the 20 39-foot mark, between the 41-foot mark, true? 21 A. That's what it appears to me, yes. 22 Q. And if you'll look down in the second 23 part, you'll see "Fibrous Talc." And under 24 "Fibrous Talc," it appears it's 20 percent fibrous 25 talc, and then going across to the lower section,</p>

51 (Pages 198 to 201)

Patrick Downey

Page 202	Page 204
<p>1 10 percent fibrous talc, and then 10 percent 2 fibrous talc; do you see that? 3 MS. ZOU: Objection; outside the scope. 4 A. That's what it says. 5 Q. (By Ms. O'Dell) If you turn to the next 6 page, you'll see results from drill hole 6-67-H; do 7 you see that? 8 A. Dash 8? 9 Q. H. 10 A. Okay. Sorry. 11 Q. H? 12 A. With my hearing, if you enunciate the 13 ends of the words, that's my clue. 14 Q. Yeah. Sorry. I'm looking down at the 15 document and not looking at you and it makes more 16 difficult. And I apologize. 17 So we've got drill hole 6-67-H; do you see 18 that? 19 A. Yes. 20 Q. And that drill hole that has been -- the 21 core has been measured at various feet, 139 to 22 141.7, 149 to 153, and so on. 23 And if you look down below, you see it has 24 10 percent, 5 percent, 20 percent, 10 percent, and 25 then for two sections, 5 percent fibrous talc; do</p>	<p>1 A. I'm sorry. 2 Q. That material was examined under x-ray 3 diffraction, true? 4 A. That's what it says. 5 Q. Okay. Turn to the next page. You'll 6 see results from diamond drill hole 45-67-8. 7 Interval between 903 and 905 feet was examined, and 8 they found .4 percent tremolite, true? 9 MS. ZOU: Objection. 10 MR. PROST: Join. 11 THE WITNESS: What did you say? 12 MR. PROST: I joined -- I joined Shasha's 13 objection. 14 A. That's what it says. 15 Q. (By Ms. O'Dell) And I could go on and 16 walk you through the other tables, Mr. Downey, but 17 do you have any reason to doubt the results 18 reported in this report commissioned by 19 Johnson & Johnson? 20 MR. PROST: Object to form. 21 MS. ZOU: Objection. 22 A. Miss Pier would be the one to discuss 23 any interpretation of the results. I don't dispute 24 that these records say what they say, as written. 25 Q. (By Ms. O'Dell) Okay. Has Imerys</p>
Page 203	Page 205
<p>1 you see that? 2 A. Yes. 3 Q. And fibrous talc is asbestiform talc, 4 correct? 5 MR. PROST: Object to form. 6 A. Not to me, it's not. 7 Q. (By Ms. O'Dell) Is it your 8 understanding, Mr. Downey, that that fibrous talc 9 can have the same cancer-causing properties as 10 types of asbestos? 11 MR. PROST: Object to form. 12 A. No. 13 Q. (By Ms. O'Dell) Okay. All right. Turn 14 over to page 5050, test results for diamond drill 15 hole 44-67-H. And they tested intervals between 16 299 feet and 309 feet. And tremolite-actinolite 17 was .5 percent and .4 percent respectively, 18 correct? 19 A. Yes. 20 Q. And that was material that was examined 21 under x-ray diffraction and -- or x-ray 22 diffraction, just in there? 23 MR. PROST: Object to form; outside the 24 scope. 25 Q. (By Ms. O'Dell) True?</p>	<p>1 commissioned any examination of the Hammondsville 2 Mine during the time period since 1989? And I'm 3 referring to -- when I say "Imerys," I mean Cyprus, 4 Rio Tinto, Luzenac or Imerys. 5 Are you aware of any geological survey or 6 audit that those entities have commissioned for 7 purposes of examining the Hammondsville Mine? 8 A. That would have been in that time frame 9 that you're asking, beginning in 1989. That's when 10 Cyprus purchased the Hammondsville Mine. And it 11 only operated for a couple of years, so that only 12 would have been Cyprus, but I don't know if Cyprus 13 conducted a survey that you describe. It's 14 possible. I don't know if I've seen record of it 15 or not. 16 Q. It's possible, but you don't know? 17 A. I don't recall. 18 Q. Have you ever asked for information 19 regarding the Hammondsville Mine? 20 A. Yes. As indicated in my notes from 21 earlier, I had asked for information. 22 Q. But you didn't receive any? 23 A. I think I saw some information of a set 24 of documents that were produced. I saw them 25 sometime yesterday.</p>

Patrick Downey

Page 206	Page 208
<p>1 Q. And was that -- what document are you 2 referring to?</p> <p>3 A. As I described them earlier today, it 4 was several pages -- I don't know if it was all one 5 collection or not -- of various, but as I recall, I 6 think there was some information on Hammondsville 7 there.</p> <p>8 Q. Have you ever seen a specific 9 examination of a specific audit report or 10 examination of the Hammondsville Mine? I mean, 11 you're talking about you've seen references. You 12 said yesterday you saw documents that referenced 13 Hammondsville. But I'm asking a more specific 14 question. Not the document that just refers to it, 15 but a specific analysis, memorandum, of the 16 Hammondsville Mine.</p> <p>17 A. I don't recall.</p> <p>18 Q. Let me show you what I've marked as 19 Exhibit 15 and ask you if you've ever seen this 20 document.</p> <p>21 (Exhibit 15 was marked for identification.)</p> <p>22 A. (Document reviewed.)</p> <p>23 Q. (By Ms. O'Dell) Did Imerys counsel 24 provide this document to you in preparation for 25 your deposition today?</p>	<p>1 A. Yes.</p> <p>2 Q. And that sentence underscores the fact 3 that Hammondsville, unlike Argonaut and others, was 4 an underground mine, true?</p> <p>5 A. That's correct.</p> <p>6 Q. And so this drilling was an effort to 7 evaluate the ore body around the areas that had 8 been tunnelled and were currently being mined?</p> <p>9 A. I didn't catch the first part.</p> <p>10 Q. That had been tunnelled, the underground 11 tunnels and the areas that were currently being 12 mined. This was an effort to further define the 13 ore body in order to determine where they could 14 continue their underground mine process, fair?</p> <p>15 MR. PROST: Object to form; outside the 16 scope.</p> <p>17 A. Generally, yes.</p> <p>18 Q. (By Ms. O'Dell) Okay. Let me ask you 19 just a practical question.</p> <p>20 On page Bates ending 991 of this document, 21 it refers to the core boxes. And in the document 22 it says that they're stored and gives you, 23 basically, a description of where the particular 24 drill cores are stored for the specific drill 25 holes; do you see that?</p>
Page 207	Page 209
<p>1 MR. PROST: Objection.</p> <p>2 A. I haven't seen this document before.</p> <p>3 Q. (By Ms. O'Dell) Let me show -- ask you 4 to turn to page 2, and you'll see, Mr. Downey, it 5 is a Report of the Geology Section, Windsor 6 Minerals Inc. It's entitled "Geology and Ore 7 Reserves of the Hammondsville Ore Body," by William 8 Gregg, dated February the 20th, 1978.</p> <p>9 And you've not seen this before?</p> <p>10 A. I don't believe so, no. (Document 11 reviewed.)</p> <p>12 Q. Have you had a moment to take a look at 13 it?</p> <p>14 A. It's a lengthy report. The brief time I 15 have looked through it wouldn't do justice of 16 trying to figure out what it means.</p> <p>17 Q. All right. Let me just ask you a couple 18 of general questions about the report itself. Turn 19 to page ending 976. So you'll see at the beginning 20 under "Introduction," it says the report marks the 21 completion of diamond-drilling program initiated in 22 '76 to further define the Hammondsville ore body at 23 depth below the presently worked fourth -- and 24 that's 690 feet -- level; did I read that 25 correctly?</p>	<p>1 MR. PROST: Object.</p> <p>2 A. I'm trying to familiarize myself with 3 what's going on here.</p> <p>4 Q. (By Ms. O'Dell) Looks like a diagram.</p> <p>5 MR. PROST: Outside the scope.</p> <p>6 A. We're on 91?</p> <p>7 Q. (By Ms. O'Dell) Yeah. Mm-hmm.</p> <p>8 A. Did you say "second diagram"?</p> <p>9 Q. It's a diagram.</p> <p>10 A. Okay.</p> <p>11 MS. O'DELL: And the reason I don't think 12 it's out of the scope is because we've covered 13 cores, core logs, and this is cores.</p> <p>14 Q. (By Ms. O'Dell) And I'm asking a 15 specific question, Mr. Downey. In your visits to 16 Argonaut, have you visited the location where core 17 logs are stored at the Vermont mines?</p> <p>18 MR. PROST: Outside the scope. And my 19 objection is my understanding is that it was 20 specifically made outside the scope in terms of 21 retention or storage, so . . .</p> <p>22 A. I haven't visited where the core boxes 23 are stored.</p> <p>24 Q. (By Ms. O'Dell) Okay. All right.</p> <p>25 Mr. Downey, I would take you through that, but I'm</p>

53 (Pages 206 to 209)

Patrick Downey

Page 210	Page 212
<p>1 going to spare you for purposes of time.</p> <p>2 We've talked about Hammondsville. And in</p> <p>3 light of the fact that Imerys or the predecessor</p> <p>4 companies had not performed an analysis, I have</p> <p>5 brought to the deposition today the J&J analyses of</p> <p>6 the Hammondsville Mine.</p> <p>7 But it's your testimony you've never seen</p> <p>8 those before today?</p> <p>9 A. I have not.</p> <p>10 Q. All right. Let me show you what I'm</p> <p>11 going to mark as Exhibit Number 16.</p> <p>12 (Exhibit 16 was marked for identification.)</p> <p>13 Q. (By Ms. O'Dell) And I folded this</p> <p>14 because it was -- it was legal and it wouldn't fit</p> <p>15 in my box.</p> <p>16 MS. O'DELL: So here you go.</p> <p>17 Q. (By Ms. O'Dell) Have you seen these</p> <p>18 maps of the Hammondsville Mine before?</p> <p>19 A. No, I have not.</p> <p>20 Q. Have you seen other maps of the</p> <p>21 Hammondsville Mine, detailed maps similar to these?</p> <p>22 MR. SILVER: Can you please put on the</p> <p>23 record the Bates numbers?</p> <p>24 MS. O'DELL: It's Exhibit 16, JNJ 000261701.</p> <p>25 Q. (By Ms. O'Dell) And so to go back where</p>	<p>1 Q. What period of time did the Hamm Mine</p> <p>2 supply talc, J&J talc?</p> <p>3 A. It was first indicated as an approved</p> <p>4 source, I believe, in September of 1990.</p> <p>5 Q. And when did Hamm cease to be a source</p> <p>6 of talc for Johnson & Johnson products?</p> <p>7 A. Generally speaking, when Argonaut became</p> <p>8 the sole source. I think that was in '94 or '95.</p> <p>9 Q. Is that -- do you have a specific</p> <p>10 recollection of that or are you just sort of</p> <p>11 guessing?</p> <p>12 A. That's my recollection.</p> <p>13 Q. Is it '94 or '95? Is that what you</p> <p>14 said?</p> <p>15 A. It's '94 or '95. That's my</p> <p>16 recollection.</p> <p>17 Q. Are you aware that, in 1992, a core</p> <p>18 drilling -- core drilling was performed at the Hamm</p> <p>19 Mine?</p> <p>20 A. No.</p> <p>21 Q. And just for the jury's sake, Hamm is an</p> <p>22 open-pit mine, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And so open-pit mines involve drilling,</p> <p>25 inserting, you know, dynamite or some kind of</p>
Page 211	Page 213
<p>1 we were before I put the Bates number on the</p> <p>2 record, I asked you if you had seen any detailed</p> <p>3 geologic maps of the Hammondsville Mine prior to</p> <p>4 the set I put before you. And as I understand it,</p> <p>5 your answer's "no"?</p> <p>6 A. I don't believe I've seen any geologic</p> <p>7 map -- or mine maps of Hammondsville.</p> <p>8 Q. Are you familiar with the underground</p> <p>9 mining operation at Hammondsville?</p> <p>10 A. It was closed before my first trip to</p> <p>11 Vermont.</p> <p>12 Q. So you're not familiar with that?</p> <p>13 A. No, not -- I don't have any personal</p> <p>14 information about it, personal knowledge.</p> <p>15 Q. Do you have any knowledge that you have</p> <p>16 gained about the operation of the Hammondsville</p> <p>17 Mine during the course of preparing for this</p> <p>18 deposition?</p> <p>19 A. No, just that I knew that it was an</p> <p>20 underground mine.</p> <p>21 Q. Okay. You may put that aside,</p> <p>22 Mr. Downey. Thank you.</p> <p>23 I'm going to transition now to the Hamm</p> <p>24 Mine.</p> <p>25 A. Okay.</p>	<p>1 explosive into a hole, setting off the explosive,</p> <p>2 removing the overburden and then, you know, mining</p> <p>3 the ore that's soft, fair?</p> <p>4 MR. PROST: Object to form.</p> <p>5 Q. (By Ms. O'Dell) I mean, that's the</p> <p>6 general -- that's a general description of open-pit</p> <p>7 mining?</p> <p>8 A. It can be. It depends on the type of</p> <p>9 mine, the geology and other things, other factors.</p> <p>10 Q. But for Hamm, it was an open-pit mine</p> <p>11 that utilized blasting for purposes of the mining</p> <p>12 process, true?</p> <p>13 A. It was an open-pit mine. Again, I -- it</p> <p>14 was closed before my first visit to Vermont. I</p> <p>15 hadn't seen the mine, so I don't have direct</p> <p>16 knowledge that they blasted, but blasting is a</p> <p>17 common method that is used in open-pit mining.</p> <p>18 Q. And is it your understanding that that</p> <p>19 method was used at the Hamm Mine?</p> <p>20 A. I don't have any personal knowledge of</p> <p>21 that.</p> <p>22 Q. Were you provided any information? Did</p> <p>23 you seek to educate yourself about the manner in</p> <p>24 which mining was undertaken in the Hamm Mine?</p> <p>25 A. I did. It may have been in some of the</p>

54 (Pages 210 to 213)

Patrick Downey

Page 214	Page 216
<p>1 documents I saw sometime yesterday. There may have 2 been something in that, but, again, that was a 3 stack of documents that I reviewed. It may be in 4 that information. I don't know. 5 Q. And as you're sitting here today, you 6 don't have any -- 7 A. I don't recall. 8 Q. You don't recall any information about 9 the mining operations at the Hamm Mine, correct? 10 A. For Hamm specific, I don't have a 11 recollection. 12 Q. I'm going to show you what I've marked 13 as Exhibit Number 17. 14 (Exhibit 17 was marked for identification.) 15 Q. (By Ms. O'Dell) It's a core log for 16 drill hole 921 -- 92-1 that was drilled on 17 April the 25th, 1992. I'm going to hand you a 18 series of documents, Mr. Downey. 19 Second exhibit, number 18, represent to you 20 it's a core log from drill hole 92-2. 21 (Exhibit 18 was marked for identification.) 22 MS. O'DELL: For purposes of the record, 23 Exhibit 18 is IMERYS 435996, and it's dated 24 April 26, 1992. 25 THE WITNESS: April what?</p>	<p>1 essentially a grid, a mine grid, correct? 2 A. Yes. 3 Q. And it's north 9421.7 and then east, I 4 think it's 10093.5. 5 And so for someone reading this, that gives 6 a very specific location as to where that core was 7 taken? 8 A. That references where the collar of the 9 drill hole was located. 10 Q. So the drill was located there. That's 11 where the collar was located, but the drill -- you 12 could drill either straight down or you can drill 13 at an angle. 14 And so just depends on what they were 15 actually doing, correct? 16 A. That's correct. 17 Q. All right. So in this instance, the 18 inclination of where the drill was directed is 19 bearing north 50W, and then the inclination is 20 minus 70 degrees, correct? 21 A. That's what it says. 22 Q. And that's not unusual that you don't 23 necessarily drill straight down, for those that are 24 not familiar. 25 You drill -- you can drill at an angle, and</p>
Page 215	Page 217
<p>1 MS. O'DELL: Excuse me. Let me do that 2 again. April 27, 1992. 3 And I'm going to give you the Bates number 4 again. It's IMERYS 435992, and that's Exhibit 18. 5 I'm going to mark Exhibit 19, which is 6 IMERYS 435996. And it is dated April 26, 1992. 7 (Exhibit 19 was marked for identification.) 8 MS. O'DELL: I'm also going to mark Exhibit 9 Number 20, which is Imerys 436000, dated 10 April 29th, 1992. 11 (Exhibit 20 was marked for identification.) 12 Q. (By Ms. O'Dell) Have you seen these 13 documents before, Mr. Downey? 14 A. No. 15 Q. Were you aware that, prior to seeing 16 these documents, that core logging had been done in 17 the Hamm Mine in 1992? 18 A. No. 19 Q. I'll ask you to go back to Exhibit 17. 20 And just for purposes of educating the jury, up at 21 the top, it gives general information about the 22 location of where the core has been drilled, 23 correct? 24 A. Yes. 25 Q. And the location is given as a plot on</p>	<p>1 often you do drill at an angle to try to better 2 understand the ore body? 3 A. Yes. 4 Q. And this particular hole was drilled to 5 250 feet? 6 A. Yes. 7 Q. And then you come down and it will -- it 8 provides information regarding the ore type. And 9 it gives a description of the core that's being 10 pulled. And then if you look to the very left, 11 that number 5, number 10, number 15, number 20, 12 that's the feet? 13 A. In the very left column? 14 Q. Yeah. 15 A. Yes. 16 Q. So as the cores are drilled and they're 17 pulled out of the shaft where the drill -- I don't 18 know if that's the correct term, but the shaft 19 where they pull the material from the hole, then a 20 geologist will look at that material and describe 21 it, and that's what becomes a core log, correct? 22 A. Yes. 23 Q. And so if you look across after "Core 24 Description," you'll see the percentage of talc 25 that's contained in that particular section,</p>

55 (Pages 214 to 217)

Patrick Downey

<p style="text-align: right;">Page 218</p> <p>1 percentage of amphiboles; do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Percentage of "sulf," what does that</p> <p>4 stand for?</p> <p>5 A. I believe sulfide.</p> <p>6 Q. Okay. And then you have percentage of</p> <p>7 opaque; do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So -- and then you have</p> <p>10 percentage of recovery.</p> <p>11 And what does percentage of recovery refer</p> <p>12 to?</p> <p>13 A. Sometimes in a fractured zone, you don't</p> <p>14 extract all of the material, and so the recovery is</p> <p>15 the material that you obtained.</p> <p>16 Q. Okay. So that gives us a general</p> <p>17 understanding of core logs.</p> <p>18 Let me show you what I'm going to mark as</p> <p>19 Exhibit Number 21.</p> <p>20 (Exhibit 21 was marked for identification.)</p> <p>21 MS. O'DELL: And for the record, that's</p> <p>22 IMERYS 238270.</p> <p>23 Q. (By Ms. O'Dell) Have you seen this</p> <p>24 document before?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 220</p> <p>1 waste-to-ore ratio of 0.52:1 are calculated within</p> <p>2 the confines of the planned open pit at Hamm in</p> <p>3 Vermont; did I read that correctly?</p> <p>4 A. You missed a few words, but that's</p> <p>5 generally what it says.</p> <p>6 Q. Okay. Look down on paragraph two.</p> <p>7 (As read:) Fibrous amphiboles (actinolite) were</p> <p>8 observed only within the chloritized mafic dikes,</p> <p>9 extending, in places, a couple of inches into the</p> <p>10 contact talc ore; did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. And it says, "An XRD amphibole scan,</p> <p>13 made on all sampled core intervals, yielded</p> <p>14 negative results." And I'll talk to you about that</p> <p>15 some more, okay?</p> <p>16 But in terms of these chloritized mafic</p> <p>17 dikes which contained actinolite, based on this</p> <p>18 sentence there, those dikes were located a couple</p> <p>19 of inches into the contacting talc ore, true?</p> <p>20 MR. PROST: Object to form.</p> <p>21 A. That's what it says.</p> <p>22 Q. (By Ms. O'Dell) Okay. If you'll look</p> <p>23 on page 2, bottom, it says, "In spite of production</p> <p>24 demands and its overall strategic value" -- and</p> <p>25 that's referring to the Hamm Mine, correct?</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. And this is a report from R.J. Kellie</p> <p>2 and S.B. Carpenter, dated May 21st, 1992. And the</p> <p>3 subject is "Hamm Core Drilling"; do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And does this appear to be -- and take a</p> <p>6 look at it -- a report that describes the findings</p> <p>7 from the drill holes that we just looked at the</p> <p>8 core logs?</p> <p>9 A. (Document reviewed.) What's your</p> <p>10 question again? I'm sorry.</p> <p>11 Q. Would you agree with me -- make it a</p> <p>12 little easier -- that this report is a report from</p> <p>13 R.J. Kellie and S.B. Carpenter regarding the four</p> <p>14 core drills that they conducted in April of 1992,</p> <p>15 hole 92-1, hole 92-2, hole 92-3 and hole 92-4?</p> <p>16 MR. PROST: Object to form.</p> <p>17 A. This memo describes -- or is a report</p> <p>18 that includes information on those four holes, yes.</p> <p>19 Q. (By Ms. O'Dell) All right. And you'll</p> <p>20 see a summary at the top. He's talking about "With</p> <p>21 the information gained from the recently completed</p> <p>22 USB core drilling," and that's referring to</p> <p>23 U.S. Borax, correct?</p> <p>24 (As read:) USB core drilling, some 1.8</p> <p>25 million tons of combined mineable talc ores with a</p>	<p style="text-align: right;">Page 221</p> <p>1 A. I'm trying to find what's --</p> <p>2 Q. Sorry. Last paragraph. "In spite of</p> <p>3 the production demands and its overall strategic</p> <p>4 value," and we're talking about -- "its strategic</p> <p>5 value" refers to the Hamm Mine, correct?</p> <p>6 A. I think that's what it says at the</p> <p>7 continuation of that sentence.</p> <p>8 Q. "...the ore reserves of the Hamm Mine</p> <p>9 were poorly understood. Previous drilling had not</p> <p>10 delineated the talc body with respect to country</p> <p>11 rocks nor was ore continuity with depth clearly</p> <p>12 established. In order to adequately measure the</p> <p>13 remaining ore reserves, additional drill</p> <p>14 information was needed, particularly at depth</p> <p>15 within the limits of the proposed pit. It was also</p> <p>16 necessary to interpret, with new drilling, existing</p> <p>17 sources of information. Many of the available</p> <p>18 drill logs simply referred to 'type 30' or 'type</p> <p>19 20' ore."</p> <p>20 Do you know what "type 30" ore is?</p> <p>21 A. No.</p> <p>22 Q. Do you know what "type 20" ore is?</p> <p>23 A. No.</p> <p>24 Q. "...some simply stated 'talc' or</p> <p>25 'non-ore.' Believe it or not, some holes were not</p>

Patrick Downey

Page 222	Page 224
<p>1 even logged or analyzed. Due diligence drilling 2 was clearly necessary to complete the evaluation of 3 the important Hamm reserves"; did I read that 4 correctly? 5 A. Yes. 6 Q. If you'll turn the page, then it 7 describes the four in-pit sites were collected, the 8 ones we just referenced, and we marked the core 9 logs that were generated from that drilling. And 10 it says 92.1 was to test the extent of type 30 ore. 11 And then it says talc/carbonate, 40 to 50 percent 12 talc, exposed to the pit bottom, delineate 13 serpentine -- excuse me, delineate serpentinite 14 mass. 15 Mr. Downey, was talc ore composed of 16 talc/carbonate, 40 to 55 percent, ore that would 17 have been appropriate for Johnson & Johnson's 18 talcum-powder products? 19 MR. PROST: Object to form. 20 A. I can't tell that from this document. 21 Q. (By Ms. O'Dell) Moving on to hole 22 92-1 [sic], "To add confidence to a large area of 23 projected reserves on section 4 plus 00 and 24 delineate the amphibolite exposed in the southern 25 pit wall"; did I read that correctly?</p>	<p>1 If you look down to the "Drilling" section, 2 it mentions a contract mining company by the name 3 of MacKenzie Construction. 4 Who is MacKenzie Construction? 5 A. I've seen MacKenzie Construction 6 referenced as the contract miner at Hamm. 7 Q. And what -- in terms of contract mining, 8 what was general scope of the work of MacKenzie 9 Construction at the Hamm Mine? 10 A. Other than that they did the contract 11 mining, I'm not sure. 12 Q. What is meant by "contract mining"? 13 A. Generally speaking, a mine operator can 14 either do the mining themselves or they can farm it 15 out to a third party known as a mining contractor. 16 Q. When you say "mining," what are you 17 referring to? Are you talking about the drilling? 18 Are you referring to blasting? Are you referring 19 to removing overburden? What are you referring to 20 when you're talking about a contract miner? 21 A. Well, generally speaking, a mining 22 contractor might have the entire scope, but 23 depending on the type of mine and the type of 24 contracts, a mining contractor might -- there might 25 be more than one contractor involved, maybe one for</p>
Page 223	Page 225
<p>1 A. Yes. 2 Q. And amphibolite is another variation of 3 amphibole, correct? 4 A. Generally it's a -- I think a broad term 5 that collectively is amphibole minerals. 6 MR. SILVER: Leigh, just to correct the 7 record, you had said, "moving on to hole 92-1," but 8 you read from 92-2. 9 MS. O'DELL: Two. I didn't -- sorry. I 10 didn't mean to. 11 MR. SILVER: It's fine. It's late in the 12 day. 13 MR. PROST: I was going to tell her. 14 MS. O'DELL: Well, if I'm looking at 15 something and I'm saying something else, I'll often 16 get off track, so thank you for that. I was 17 reading from 92-2. 18 Q. (By Ms. O'Dell) The bottom line is, the 19 core logs that we just marked as Exhibit -- I 20 believe it was 17320, are being analyzed in this 21 memo, and the specific purposes of those holes are 22 being described in this memo, correct? 23 A. Yes. 24 Q. Okay. Let me ask you a few more 25 questions.</p>	<p>1 drilling, another for doing the mining. I don't 2 know. 3 Q. What was -- and you're not aware of what 4 MacKenzie Construction Company's role was at the 5 Hamm Mine? 6 A. Other than the reference that I saw that 7 they were the mining contractor, that's pretty much 8 all I know. 9 Q. And you don't have an understanding of 10 the scope of the work that they performed at the 11 Hamm Mine, true? 12 A. I don't know the entire scope, no. 13 Q. Okay. Let's turn to the last -- excuse 14 me, not the last page, but page 4 of the document 15 ending Bates 273. It's referring to the logging 16 and sampling. 17 So the drill cores were logged at the site 18 of the drilling, correct? It says, "Drill cores 19 were logged on-site." 20 A. Yes. 21 Q. And if you'll move down a paragraph, it 22 says -- excuse me, down the page to the paragraph 23 beginning, "Drilled internal waste rock"; do you 24 see that? 25 A. Yes.</p>

57 (Pages 222 to 225)

Patrick Downey

<p style="text-align: right;">Page 226</p> <p>1 Q. "Drilled internal waste rock was 2 comprised of serpentinite and chloritized, mafic 3 dike. Hole 92-4 penetrated garnet schist foot 4 wall. Fibrous actinolite was seen in chloritic 5 dikes and occasionally extended a few inches into 6 the talc ore at contacts. No other asbestos-form 7 minerals were noted in the drill cores"; did I read 8 that correctly? 9 A. Yes. 10 Q. So Mr. Kellie and Mr. Carpenter did note 11 fibrous actinolite in the chloritic dikes that 12 occasionally went into the talc ore, true? 13 A. Show me again where you're reading? I'm 14 sorry. I lost you. 15 Q. Same paragraph. And really asking you 16 the question: Actinolite, fibrous actinolite, was 17 seen in chloritic dikes that occasionally extended 18 into the talc ore, true? 19 A. This says that "occasionally extended a 20 few inches into the talc ore at contacts." 21 Q. It went on to say, "Analytical sample 22 intervals were selected primarily on the basis of 23 ore type." 24 So in other words, the samples that were 25 taken for purposes of analysis were selected based</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. All right. Then it says, "Talc ore 2 observed to contain fibrous amphibole was not 3 included in a sample interval"; did I read that 4 correctly? 5 A. Yes. 6 Q. Mr. Downey, this is talking about talc 7 ore. And where talc ore was observed by these 8 geologists to contain fibrous amphibole, it was not 9 sampled, correct? 10 MR. PROST: Object to form. 11 A. It says it was not included in the 12 sample interval. 13 Q. (By Ms. O'Dell) Correct. My statement 14 was correct, wasn't it? 15 A. You can have it read back, but it says 16 what it says. 17 Q. It says that samples of -- were not 18 taken where fibrous amphiboles were seen or 19 observed in talc ore, true? 20 A. It says, "Talc ore observed to contain 21 fibrous amphibole was not included in a sample 22 interval." 23 Q. Let me ask you to look -- to turn to, 24 excuse me, the last page of the document, page 6, 25 Bates number ending 275. I ask you to look at the</p>
<p style="text-align: right;">Page 227</p> <p>1 on ore type, correct? 2 A. Yes. 3 Q. "Whenever possible, sample length was 15 4 feet." 5 "Sample length" means the distance 6 between -- on a particular core, between one sample 7 and the other. So if you had a 250-foot hole, this 8 sentence is saying the sample length was -- they 9 tried to make it 15 feet, correct? 10 A. They said, "Whenever possible, sample 11 length was 15 feet." 12 Q. Okay. (As read:) The minimum sample 13 length was 9 feet unless the interval bounded -- 14 excuse me -- unless the interval bounded internal 15 waste rock. 16 MR. PROST: Ten feet. 17 A. I don't know if your document says 9 or 18 10. This one says 10. 19 Q. (By Ms. O'Dell) Okay. I really am 20 getting tired. I need some more chocolate. I did 21 see "10." Okay. Let me read that again. 22 "The minimum sample length was 10 feet 23 unless the interval bounded internal waste rock"; 24 did I read that correctly? 25 A. Yes.</p>	<p style="text-align: right;">Page 229</p> <p>1 last paragraph. 2 A. There's two more pages. I don't know if 3 that's the last page of the document. 4 Q. Yeah. Oh, my apologies. 1275 is the 5 right page. Okay? Take a look at the last 6 paragraph, please. It says, "XRD scanning did not 7 reveal the presence of amphibole in the drill core. 8 This is consistent with the selected sample 9 intervals"; did I read that correctly? 10 A. Yes. 11 Q. Isn't it true, Mr. Downey, that if 12 samples were not taken of fibrous amphiboles in 13 talc ore, then it's not surprising that the XRD 14 scanning would be negative? 15 MR. PROST: Object to form. 16 Q. (By Ms. O'Dell) True? 17 A. This is the first time I've seen this 18 document. I think that there's -- I'm not familiar 19 with their methodology, but because they 20 intentionally didn't sample that interval that way, 21 this conclusion is accurate. 22 Q. If you don't sample it, it's not 23 surprising if you don't find it, true? 24 A. I think, based on selective mining, 25 which was what Cyprus indicated that needed to be</p>

58 (Pages 226 to 229)

Patrick Downey

Page 230	Page 232
<p>1 done at Hamm in order to be able to mine it --</p> <p>2 Q. And my question -- excuse me, sir -- is</p> <p>3 a little bit more simple.</p> <p>4 I'm saying, if you don't sample something,</p> <p>5 it's not surprised -- it's not surprising that you</p> <p>6 don't find it in the test results, correct?</p> <p>7 MR. PROST: Object to form.</p> <p>8 Q. (By Ms. O'Dell) So if they weren't</p> <p>9 sampling fibrous amphiboles, the fact that the XRD</p> <p>10 test for amphiboles was negative is not</p> <p>11 surprising --</p> <p>12 MR. PROST: Object to form.</p> <p>13 Q. (By Ms. O'Dell) -- true?</p> <p>14 A. It's my understanding that their</p> <p>15 sampling method matched their -- what they expected</p> <p>16 from selective mining.</p> <p>17 Q. So the answer to my question is "yes"?</p> <p>18 A. I forgot the way you asked your</p> <p>19 question.</p> <p>20 Q. If they weren't sampling fibrous</p> <p>21 amphiboles, the fact that XRD tests for amphiboles</p> <p>22 was negative is not surprising.</p> <p>23 MR. PROST: Object to form.</p> <p>24 Q. (By Ms. O'Dell) That's correct?</p> <p>25 A. Their sampling methodology was for their</p>	<p>1 taken place until I showed you the core logs.</p> <p>2 A. From the due-diligence reports from --</p> <p>3 that Cyprus had done, it clearly states that they</p> <p>4 needed to employ selective mining.</p> <p>5 Q. Okay. And is that -- this memo that</p> <p>6 we've just gone over talks in terms of sampling in</p> <p>7 terms of feet. They sampled -- they tried to</p> <p>8 sample every 15 feet. If they couldn't do that, a</p> <p>9 minimum of 10 feet, they took a sample. That's the</p> <p>10 extent of their protocol for sampling in that</p> <p>11 particular analysis, true?</p> <p>12 A. The selection of the sample interval is</p> <p>13 also correlated to the bench height of how you are</p> <p>14 mining the deposit.</p> <p>15 Q. Bench height was not mentioned in the</p> <p>16 memorandum analyzing the core drilling that was</p> <p>17 done at Hamm in 1992, true?</p> <p>18 A. I haven't read the entire document.</p> <p>19 Q. In the expansive portions that we've</p> <p>20 gone through, bench mining was not mentioned, true?</p> <p>21 A. I don't recall seeing that.</p> <p>22 Q. And moreover, selective mining was also</p> <p>23 not a part of -- selective mining was also not a</p> <p>24 part of the analysis as outlined in the memorandum</p> <p>25 we've marked as Exhibit 21?</p>
Page 231	Page 233
<p>1 mining method. They clearly have other indications</p> <p>2 that the amphibole mineral is present.</p> <p>3 Q. Where does it say that their -- when we</p> <p>4 went over the sampling protocol and it talked about</p> <p>5 the intervals at which analytical samples were</p> <p>6 taken, it does not mention selective mining, does</p> <p>7 it, Mr. Downey?</p> <p>8 A. No. The documents that I'm aware of on</p> <p>9 the due diligence for Hamm, Cyprus clearly</p> <p>10 indicated that selective mining was going to be</p> <p>11 necessary, and that's what they employed.</p> <p>12 Q. I'm not disputing with you that</p> <p>13 selective mining was employed at Hamm, but in terms</p> <p>14 of this testing, selective mining is not a part of</p> <p>15 the analysis that's contained in the memo that we</p> <p>16 just looked at, correct?</p> <p>17 A. What do you mean it's not?</p> <p>18 Q. In terms of what they were sampling and</p> <p>19 testing, selective mining was not a part of that</p> <p>20 analysis?</p> <p>21 A. It's my understanding that their</p> <p>22 sampling method was to correlate with their</p> <p>23 selective-mining method.</p> <p>24 Q. How did you get that understanding? You</p> <p>25 didn't even know that those -- that drilling had</p>	<p>1 MR. PROST: Object to form.</p> <p>2 A. In terms of what?</p> <p>3 Q. (By Ms. O'Dell) Selective mining is not</p> <p>4 mentioned, correct?</p> <p>5 A. I didn't see it, no.</p> <p>6 MR. PROST: You're getting close to the end</p> <p>7 of that document. I think we're hitting the home</p> <p>8 stretch, kind of. Do you want to take a final</p> <p>9 five-minute break?</p> <p>10 MS. O'DELL: Yeah, that's fine.</p> <p>11 MR. PROST: That may be a good idea.</p> <p>12 VIDEOGRAPHER: All right. Off the record at</p> <p>13 5:14.</p> <p>14 (Recess taken.)</p> <p>15 VIDEOGRAPHER: We're back on the record at</p> <p>16 5:32.</p> <p>17 Q. (By Ms. O'Dell) We were talking before</p> <p>18 the break, Mr. Downey, about core logs and</p> <p>19 specifically core drilling that was done at Hamm in</p> <p>20 1992. And let's just take a step back.</p> <p>21 The purpose of doing core drilling is to</p> <p>22 obtain information that can be used to create a</p> <p>23 model of the particular ore body or potentially</p> <p>24 some things that surround the ore body in order to</p> <p>25 provide information on how to mine that particular</p>

59 (Pages 230 to 233)

Patrick Downey

<p style="text-align: right;">Page 234</p> <p>1 deposit, true?</p> <p>2 A. I mean, that's -- that's something you</p> <p>3 can use drilling for, but, yeah, you're trying to</p> <p>4 find out information that's relevant to what you're</p> <p>5 going to mine and how you're going to mine.</p> <p>6 Q. Yes. And one of the things that Imerys</p> <p>7 does, I understand, and as well as all modern</p> <p>8 mining companies, is they take data from core logs</p> <p>9 and they actually do create a computer model of the</p> <p>10 particular deposit?</p> <p>11 A. Yes.</p> <p>12 Q. And Imerys routinely does that as part</p> <p>13 of their business practice, true?</p> <p>14 A. Yes.</p> <p>15 Q. And so when trying to create a model or</p> <p>16 an understanding of a particular deposit, you know,</p> <p>17 that model is only as good as the information</p> <p>18 that's provided to create it, true?</p> <p>19 A. Well, it also needs to be relevant for</p> <p>20 how you plan to mine. There's a lot of</p> <p>21 information, and you're digesting information so</p> <p>22 that you can make your mine plans.</p> <p>23 Q. But the mine plan and selective mining</p> <p>24 is based on -- or should be based on an accurate</p> <p>25 understanding of the material and minerals in a</p>	<p style="text-align: right;">Page 236</p> <p>1 itself, is the model. And it's the practice of</p> <p>2 using all of the knowledge, including what's in the</p> <p>3 model, but also what the geologists know about the</p> <p>4 deposit and what they continue to learn about the</p> <p>5 deposit as they examine the mining phases as the</p> <p>6 mine advances. Are you inferring that --</p> <p>7 Q. I got to ask you a question, Mr. Downey.</p> <p>8 All right. Let me ask you one more thing</p> <p>9 about the drill locations in relation to these four</p> <p>10 drill holes that were drilled at the Hamm Mine in</p> <p>11 '92. And if you'll look at 92-1, which was</p> <p>12 Exhibit 17, and the particular location,</p> <p>13 Mr. Downey, you'll see the location was north</p> <p>14 9421.7 and then east 10093.5; do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then the second drill hole, 92-2,</p> <p>17 was drilled at location north 9258.9 and then east</p> <p>18 999 -- three 9s -- 9990.3; do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that -- those drill holes, by my</p> <p>21 estimation, are in the neighborhood of 180 feet</p> <p>22 apart, correct?</p> <p>23 A. It's late in the day. I'm not going to</p> <p>24 do the geometry to figure out how far apart they</p> <p>25 are.</p>
<p style="text-align: right;">Page 235</p> <p>1 deposit, fair?</p> <p>2 A. Yes.</p> <p>3 Q. If you don't have good data about what's</p> <p>4 in the deposit, you cannot effectively selectively</p> <p>5 mine it, true?</p> <p>6 A. The data certainly helps, but also, part</p> <p>7 of selective mining is, you know, visually</p> <p>8 examining the material that you are mining.</p> <p>9 Q. And for purposes of a mine model being</p> <p>10 generated following the drilling of cores, that</p> <p>11 model is only going to be as good as the</p> <p>12 information provided by the samples taken from that</p> <p>13 core, correct?</p> <p>14 A. There's lots of ways that information</p> <p>15 can be incorporated into a mine model that also</p> <p>16 includes development drilling and geologic mapping</p> <p>17 as the mine advances. So the data is being</p> <p>18 updated. It's not static.</p> <p>19 Q. But the model itself is only as good as</p> <p>20 the accuracy of the data that's provided to create</p> <p>21 the model.</p> <p>22 MR. PROST: Object to form.</p> <p>23 Q. (By Ms. O'Dell) True?</p> <p>24 A. Having accurate data certainly helps the</p> <p>25 accuracy of the model, but the model, in and of</p>	<p style="text-align: right;">Page 237</p> <p>1 Q. They're more than 10 feet apart, true?</p> <p>2 A. Yes.</p> <p>3 Q. They are more than 50 feet apart, true?</p> <p>4 A. Yes.</p> <p>5 Q. In fact, they're more than 100 feet</p> <p>6 apart.</p> <p>7 A. Of the collar locations, yes.</p> <p>8 Q. And if you'll look at drill hole 3,</p> <p>9 which we marked as Exhibit 18, and drill hole 4,</p> <p>10 Exhibit 20, the location of the collar for those</p> <p>11 drill holes is the same place, correct?</p> <p>12 A. Yes. Looks like they were drilled at</p> <p>13 different bearings.</p> <p>14 Q. Let me show you what I'm marking as</p> <p>15 Exhibit Number 22.</p> <p>16 (Exhibit 22 was marked for identification.)</p> <p>17 MS. O'DELL: It's Bates number ending -- or</p> <p>18 excuse me, Bates number IMERYYS 427291.</p> <p>19 Q. (By Ms. O'Dell) Have you seen this</p> <p>20 document before?</p> <p>21 A. I don't know.</p> <p>22 Q. If you'll turn to page 2 of the</p> <p>23 document, you'll see that this is a master plan for</p> <p>24 Northeastern mines, and it includes Hamm, Argonaut,</p> <p>25 Rainbow; do you see that?</p>

Patrick Downey

Page 238	Page 240
<p>1 A. Yes.</p> <p>2 Q. And if you'll look at the top, then,</p> <p>3 this is the fax from Luzenac Tech Center,</p> <p>4 August 19th, 1993; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And if you'll look on Bates number</p> <p>7 ending 95, you'll see an analysis of the Hamm Mine.</p> <p>8 A. Did you say 95?</p> <p>9 Q. Yeah. 95. Do you see that?</p> <p>10 A. I see Hamm listed, yes.</p> <p>11 Q. And it says (as read:) This mining</p> <p>12 locality provides cosmetic ore feed to both the</p> <p>13 Johnson Mill and West Windsor.</p> <p>14 And, of course, West Windsor, we agree,</p> <p>15 covers Johnson & Johnson talc?</p> <p>16 A. Grade 25 was manufactured at the West</p> <p>17 Windsor Mill. That was the Johnson & Johnson</p> <p>18 product.</p> <p>19 Q. Correct. And then it says</p> <p>20 "Contaminants"; do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. "Actinolite is common with chlorite</p> <p>23 cinders and schist contacts"; do you that?</p> <p>24 A. Yes.</p> <p>25 Q. Let me ask you to look at the bottom of</p>	<p>1 the drilling remains to be analyzed to provide a</p> <p>2 better profile of this resource"; did I read that</p> <p>3 correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Would it be fair to say that both the</p> <p>6 Hamm Mine and the Argonaut Mine have deposits that</p> <p>7 are irregular? So you have certain zones of talc</p> <p>8 and then you'll move into zones of schist or some</p> <p>9 other material?</p> <p>10 MR. PROST: Object to form.</p> <p>11 A. I'm not really sure what you mean.</p> <p>12 Q. (By Ms. O'Dell) I'm asking if the</p> <p>13 deposit of talc is a uniform body or if it's</p> <p>14 irregular and that there are other minerals and</p> <p>15 materials that flow in and through the talc</p> <p>16 deposit.</p> <p>17 A. Well, "irregular" is a vague term, so</p> <p>18 I'm not sure how you mean it, as well as "other</p> <p>19 minerals that flow" through the deposit. That</p> <p>20 seems equally vague. I'm not sure what you mean.</p> <p>21 Q. Have you ever read in a document or</p> <p>22 heard anyone discuss those ore deposits and refer</p> <p>23 to them as "irregular"?</p> <p>24 A. I don't recall at this time.</p> <p>25 Q. You've spent time this afternoon talking</p>
Page 239	Page 241
<p>1 the page. It's referring to the Ludlow District,</p> <p>2 and then below that you see "Argonaut Mine."</p> <p>3 A. Before we leave Hamm on contaminants, it</p> <p>4 says, "All contaminants can be avoided by selective</p> <p>5 mining."</p> <p>6 Q. Okay. All right. I'll highlight that.</p> <p>7 We'll see about that.</p> <p>8 "Ludlow," "Argonaut Mine," do you see that</p> <p>9 at the bottom of the page?</p> <p>10 A. Yes.</p> <p>11 Q. It says (as read:) This locality has</p> <p>12 recently been explored by nine core drill holes for</p> <p>13 footage of 3,712.</p> <p>14 We were provided data on four drill core</p> <p>15 holes.</p> <p>16 Do you have any information about the other</p> <p>17 five drill core holes that were done at the</p> <p>18 Argonaut Mine? Strike that. Never mind.</p> <p>19 A. I'm confused.</p> <p>20 Q. Never mind. I'll withdraw that.</p> <p>21 Okay. Turn to the next page. All right.</p> <p>22 Do you see that? "Contaminants. Selective mining</p> <p>23 will be required at the Argonaut Mine to avoid high</p> <p>24 arsenic zones plus occasional zones of actinolite</p> <p>25 with chlorite cinders and serpentinite. Much of</p>	<p>1 about selective mining in the context of the Hamm</p> <p>2 Mine. We're going to go into Argonaut in just a</p> <p>3 moment, but in the context of the Hamm Mine, what</p> <p>4 is your understanding of how selective mining was</p> <p>5 conducted?</p> <p>6 A. I can give you an example.</p> <p>7 Q. I don't want an example. I'm talking</p> <p>8 about specifically -- just -- I don't want to cut</p> <p>9 you off, but I'm running out of time, and I want to</p> <p>10 be clear.</p> <p>11 You've represented that the Hamm Mine was</p> <p>12 selectively mined.</p> <p>13 A. Yes.</p> <p>14 Q. And you have testified to that under</p> <p>15 oath on behalf of the company.</p> <p>16 And what I want to know from you is the</p> <p>17 facts you're relying on to -- well, let me back up</p> <p>18 and say, I want you to describe the specific way</p> <p>19 that selective mining was undertaken in the Hamm</p> <p>20 Mine.</p> <p>21 MR. PROST: Objection to form.</p> <p>22 A. The mafic material is dark-colored. The</p> <p>23 talc carbonate is a light-gray material. They're</p> <p>24 readily distinguishable when you're looking at</p> <p>25 them. The mine geologists can identify them. The</p>

61 (Pages 238 to 241)

Page 242

1 driller can recognize the difference with the
 2 material that's coming out of the hole. There are
 3 lots of visual clues that tell you when you are in
 4 or near those zones. And you can employ selective
 5 mining based on those visual clues quite
 6 successfully at Hamm and similarly at Argonaut.
 7 Q. (By Ms. O'Dell) And so what -- let me
 8 just step back and say, define "selective mining."
 9 Let's just step back. Define "selective mining."
 10 A. Define it?
 11 Q. Yes.
 12 A. Generally speaking, selective mining is
 13 a method in which materials that you do not want to
 14 include in the ore are removed on a selective basis
 15 using distinguishable criteria when you are mining.
 16 Q. What criteria do you use to distinguish
 17 those material you don't want?
 18 A. Well, I told you about the Hamm and
 19 Argonaut. One of those is the color difference.
 20 It's a drastic color difference between those mafic
 21 areas and the talc. There's a color difference.
 22 In addition to making the separation at that
 23 point, there's also an exclusion zone adjacent to
 24 that mafic of the talc carbonate that is also
 25 sacrificed and rejected along with the other

Page 243

1 material. So you have a buffer zone when you are
 2 mining near those areas.
 3 Q. So selective mining is a visual process
 4 of --
 5 A. There are usual.
 6 Q. -- of looking at the rock and choosing,
 7 you're going to take some versus not other rocks,
 8 fair?
 9 A. Visual is a component of it, but it's
 10 also the understanding of the overall geology of
 11 the deposit as well.
 12 Q. And other than -- it's visual, in part.
 13 You mentioned color.
 14 What other criteria are used in selective
 15 mining?
 16 A. Well, the geologist, when examining the
 17 face, can look at the mineralogy as well. But one
 18 of the first clues is to look at the color of the
 19 zone, indicating that that's a likely place to --
 20 or that's where the mafics are.
 21 Q. And anything besides color?
 22 A. Well, there's color. There's rock type.
 23 There's mineralogical aspects. I'm giving --
 24 Q. What mineralogical aspect are you
 25 talking about?

Page 244

1 A. The minerals that you see.
 2 Q. I mean, you know -- I mean, is the
 3 understanding of the mineralogy based on what is
 4 seen in the pit when you're doing selective mining?
 5 A. That's part of it, but it's the
 6 understanding of the geology and how the deposit
 7 was formed and its relation to the other rock
 8 types. So there's a number of factors that -- I
 9 probably can't list all of them, sitting here
 10 today.
 11 Q. Is it also based on the data contained
 12 in the core logs?
 13 A. That's part of the information as well.
 14 Q. And who actually does the selective
 15 mining?
 16 A. In the critical zones where that's
 17 necessary, typically, the geologist is with the
 18 shovel operator if it's -- if they're mining it
 19 with a front shovel.
 20 Q. And so it's equipment operators in the
 21 pit. We're talking about heavy equipment,
 22 front-end loaders --
 23 A. They are the ones that are skilled in
 24 how to --
 25 Q. Excuse me. I'm not -- front-end loaders

Page 245

1 in the pit that are actually removing the rocks
 2 from the pit in order to -- for it to be trucked to
 3 West Windsor or some other location, correct?
 4 A. The heavy-equipment operators are the
 5 one skilled in actually operating a piece of heavy
 6 mobile equipment to do that extraction.
 7 Q. And so on a daily basis, it's the
 8 equipment operator, primarily, who's making the
 9 selection as to what rocks are removed from the pit
 10 versus what rocks are not removed from the pit,
 11 correct? I mean, the geologist is not there all
 12 day, every day, saying, "Take this rock. Leave
 13 this one." You're not saying that, are you?
 14 Because that would --
 15 A. No, I'm not.
 16 Q. That wouldn't be true.
 17 A. I'm not saying that, but in the critical
 18 areas where the selective mining is most critical,
 19 the geologist is involved in directing the
 20 activity.
 21 Q. And how -- how, as a practical matter,
 22 how is -- how does the geologist mark which rocks
 23 are to be removed and which rocks are not to be
 24 removed?
 25 A. I think it depends on the circumstances

62 (Pages 242 to 245)

Page 246	Page 248
<p>1 of how the rocks are exposed in the pit, its 2 orientation and things like that. 3 Q. What's Imerys' policy in terms of 4 marking out exclusion zones in a pit? 5 A. What do you mean "exclusion zones"? 6 Q. You used that term. You said there are 7 exclusion zones beyond which material -- from which 8 material shouldn't be taken for purposes of mining 9 it. In other words, that material is not -- that's 10 "wasted," I think was the word you used. 11 What policy -- what's Imerys' policy for 12 marking exclusion zones in a pit? 13 A. As you mine, you are continuing to 14 expose a fresh muck face. So the way that it is 15 done is relative to a bucket width. Tell the 16 operator to stand off a certain number of bucket 17 widths away from the zone that's being rejected 18 before mining the rest of the material as ore. 19 Q. And -- 20 A. And these are the -- I'm not -- when I 21 say a "shovel," I don't mean a hand shovel. This 22 is heavy mobile equipment with a bucket that's 23 maybe eight feet wide. 24 Q. How many cubic feet is that? 25 A. Pardon?</p>	<p>1 for, you know, ten years or more. 2 Q. Is there a specific program for training 3 equipment operators that Imerys requires as a part 4 of their, just, policy and procedure for ensuring 5 that their employees are trained? 6 A. I don't recall. 7 Q. Is there a formal training program, in 8 other words? 9 A. A formal training? I know that they are 10 trained. I don't know to what extent there's 11 documentation to describe the formal training. 12 Q. In terms of the machinery that's 13 actually used in a pit to select ore, you know, for 14 shipment to a mill, is that typically a front-end 15 loader? 16 A. Typically it's a shovel. 17 Q. And when you say "a shovel," you're 18 talking about a backhoe, is what some people call 19 it? 20 A. A backhoe that is either configured for 21 underhand or overhand. It depends on the nature of 22 the deposit. 23 Q. At the Hamm Mine, do you know what type 24 of equipment was used to remove ore from the pit? 25 A. I don't recall.</p>
Page 247	Page 249
<p>1 Q. How many cubic feet would be in a bucket 2 eight feet wide? 3 A. I can't recall, off the top of my head, 4 how many cubic feet. 5 Q. And so it would be incumbent upon the 6 equipment operator to stay one or two buckets, 7 whatever the geologist has suggested, from a 8 particular area when that equipment operator is 9 removing ore from a pit, correct? 10 A. It would be? 11 Q. Incumbent. 12 A. Incumbent? Yes. 13 Q. What training does Imerys provide to 14 equipment operators regarding selective mining? 15 A. They're trained -- 16 Q. If any. 17 A. Sorry? 18 Q. If any. 19 A. They're trained to recognize different 20 features. They're the ones doing it day after day, 21 and they get to know the deposit. They talk with 22 the geologists. You know, they describe what 23 they're seeing. The geologist describes what he's 24 seeing. It's a continual process. And we also try 25 to use the -- a trained operator that's done it</p>	<p>1 Q. Have you ever known that information? 2 A. I might have seen it. I just can't 3 remember. 4 Q. Within the pit itself -- any pit, not 5 just Hamm, but any pit -- it'd be fair to say it's 6 a very dusty environment. You've got blasts going 7 off. You're moving rocks and other dirt. It's a 8 very -- it's not a clean environment, in other 9 words. It's a dusty environment. 10 MR. PROST: Object to form. 11 A. It can be dusty at some times. 12 Q. (By Ms. O'Dell) And it can also be, you 13 know, a difficult place when it's dusty to identify 14 material within the pit, fair? 15 MR. PROST: Object to form. 16 Q. (By Ms. O'Dell) That's why you use XRD 17 and other types of analysis to identify certain 18 minerals? 19 MR. PROST: Objection. 20 A. No, I don't agree with that. 21 Q. (By Ms. O'Dell) Visual inspection has 22 significant limitations; would you agree with that? 23 A. There are limitations to it. 24 Q. And those limitations grow when the pit 25 is dusty, when conditions would limit your ability</p>

Patrick Downey

Page 250	Page 252
<p>1 to identify certain rocks and what they are, true?</p> <p>2 I mean, that just makes -- that's common sense.</p> <p>3 A. I think you're -- you don't -- I don't</p> <p>4 think you're describing -- or have in mind actual</p> <p>5 conditions in the pit.</p> <p>6 Q. And so just -- it's your -- I mean, when</p> <p>7 you say you don't think I have in mind actual</p> <p>8 conditions, you think I'm misinformed to think that</p> <p>9 an open-pit mine would be dusty when it's -- when</p> <p>10 you haven't had rain recently? I mean, am I</p> <p>11 confused on that?</p> <p>12 A. You're characterizing the dust to such</p> <p>13 an extent that it would obscure your ability to</p> <p>14 identify what you're mining. And that I don't</p> <p>15 think is correct.</p> <p>16 Q. Not in whole, but it certainly would</p> <p>17 obscure, to some degree, your ability to identify</p> <p>18 certain rock with precision, correct?</p> <p>19 A. Well --</p> <p>20 Q. We can agree on that?</p> <p>21 A. -- when you're mining, the dust is --</p> <p>22 would be -- when the material is dropped from the</p> <p>23 shovel into the truck, there's a brief period of</p> <p>24 dust that's emitted when the material is falling,</p> <p>25 but that's not where the actual digging is</p>	<p>1 different materials, not just talc, but other</p> <p>2 things like schist and cinder can be scooped up</p> <p>3 into the bucket when ore is being removed from the</p> <p>4 mine, correct?</p> <p>5 MR. PROST: Object to form.</p> <p>6 A. No, I wouldn't agree, because the way</p> <p>7 that it's mined, the direction that you're mining</p> <p>8 is all factored in.</p> <p>9 Q. (By Ms. O'Dell) So that's impossible?</p> <p>10 MR. PROST: Object to form.</p> <p>11 A. I'm saying that the practices employed</p> <p>12 with mining, selective mining, it takes into</p> <p>13 consideration the geometry of what's being mined at</p> <p>14 that time to account for potential irregularity.</p> <p>15 And as I mentioned earlier, we have the offset zone</p> <p>16 where we sacrifice a great deal of talc just to</p> <p>17 make sure that we are not incorporating</p> <p>18 accidentally this other material that you describe.</p> <p>19 Q. (By Ms. O'Dell) And the accuracy -- or</p> <p>20 the carefulness, I should say, of what's being</p> <p>21 scooped up into the bucket for purposes of -- for</p> <p>22 putting it into the truck to send it to West</p> <p>23 Windsor, if you're talking about Hamm, is dependent</p> <p>24 on that shovel operator, true? True?</p> <p>25 I mean, the shovel operator is the one that</p>
Page 251	Page 253
<p>1 occurring.</p> <p>2 Q. Well, there's dust when blasts go off,</p> <p>3 correct?</p> <p>4 A. There can be, yeah.</p> <p>5 Q. Typically, quite a lot?</p> <p>6 A. There's some.</p> <p>7 Q. And so in terms of an operator, a shovel</p> <p>8 operator's ability to identify a particular rock,</p> <p>9 it's going to be based on, one, the conditions in</p> <p>10 the pit, whether it's dusty, not dusty, true? It's</p> <p>11 going -- true?</p> <p>12 MR. PROST: Object to form.</p> <p>13 Q. (By Ms. O'Dell) True?</p> <p>14 A. When the operator is digging the rock,</p> <p>15 you continue to expose fresh faces as you're</p> <p>16 digging it.</p> <p>17 Q. And if that ore body is irregular, in</p> <p>18 other words, it's not uniform, then different</p> <p>19 materials, not just talc, but other things like</p> <p>20 schist, serpentinite, can be scooped up into that</p> <p>21 bucket along with talc, correct?</p> <p>22 A. Say again? If it's --</p> <p>23 Q. I'll repeat it.</p> <p>24 And in a mine where the ore body is</p> <p>25 irregular, in other words, it's not uniform, then</p>	<p>1 is scooping up that ore and putting it in the</p> <p>2 truck, so that what goes into that bucket is</p> <p>3 dependent on the judgment that that individual</p> <p>4 makes when they were removing the ore from the pit,</p> <p>5 true?</p> <p>6 MR. PROST: Object to form.</p> <p>7 A. It depends on the informed judgment of</p> <p>8 the shovel operator and any direction from the</p> <p>9 geologist about how that particular section should</p> <p>10 be mined.</p> <p>11 Q. (By Ms. O'Dell) Some operators are not</p> <p>12 geologists, correct?</p> <p>13 MR. PROST: Object to form.</p> <p>14 A. They're not geologists, but they have a</p> <p>15 great deal of experience with the geology of the</p> <p>16 mine that they are digging in. They do it day</p> <p>17 after day.</p> <p>18 (Exhibit 23 was marked for identification.)</p> <p>19 Q. (By Ms. O'Dell) Let me show you what</p> <p>20 I've marked as Exhibit 23. It's IMERY'S 427423.</p> <p>21 Have you seen that document before?</p> <p>22 A. (Document reviewed.) No.</p> <p>23 Q. Let me ask you one more follow-up</p> <p>24 question to our discussion of the shovel operators.</p> <p>25 Is there any minimum training required prior</p>

64 (Pages 250 to 253)

Patrick Downey

Page 254	Page 256
<p>1 to a person being allowed to operate a shovel in an 2 Imerys talc mine? 3 A. Is there? 4 Q. Any minimum training required prior to a 5 person being allowed to operate a shovel in an 6 Imerys talc mine. 7 A. I believe for digging for ore, yes. 8 Q. What is that training? 9 A. I don't recall. 10 Q. Have you ever been to that training? 11 A. No. I'm not a shovel operator. 12 Q. Have you ever, just as a supervisor, 13 when you're -- have you ever attended that 14 training? 15 A. I've seen some of the training that's 16 occurred at Yellowstone, and it's with a geologist 17 interacting with the shovel operator. 18 Q. Do you have any personal knowledge of 19 training that was conducted at the Vermont mines 20 from 1989 to 2002 of their shovel operators? 21 A. No. 22 Q. Let me ask you to turn to page 23 of -- 23 excuse me, to Exhibit 23, page 2. And this is a 24 memo dated August 6, 1998. And it relates to the 25 1998 core drilling at Argonaut; do you see that?</p>	<p>1 MR. PROST: Leigh, just so you know, about a 2 minute and a half ago, the videographer gave a 3 five-minute warning, so . . . 4 MS. O'DELL: Oh, thank you. I didn't see 5 that. 6 Q. (By Ms. O'Dell) Let me ask you, if you 7 have seen any core logs, whether you reviewed them 8 or not for drill -- core drills that occurred in 9 1978. 10 A. 1978? 11 Q. Yes. 12 A. I might have. I just don't recall. 13 MS. O'DELL: How about I save my three 14 minutes for tomorrow? 15 MR. PROST: I think it's only one minute and 16 a half now. 17 MS. O'DELL: Okay. Whatever it is. 18 MR. SILVER: We're going to do whatever Joel 19 says it is. 20 MS. O'DELL: It's good breaking point. 21 VIDEOGRAPHER: All right. Off the record at 22 6:15. 23 (Whereupon, the deposition was concluded at 24 6:15 p.m. on August 7, 2018.) 25</p>
Page 255	Page 257
<p>1 A. Yes. 2 Q. And according to this document -- look 3 at paragraph two. The Argonaut Mine has been core 4 drilled, it says, in 1972, 1973, '78, '98 -- excuse 5 me, '89, '92 and '98; did I read that correctly? 6 A. Yes. 7 Q. So there are six occasions, six years, 8 during which core drilling was done at the Argonaut 9 Mine? 10 MR. PROST: Object to form. 11 Q. (By Ms. O'Dell) So core drilling has 12 been done in Argonaut in '72, '73, '78, 1989, 1992 13 and 1998? 14 MR. PROST: Object to form. 15 Q. (By Ms. O'Dell) Have you -- 16 A. As of this memo, those were the years. 17 Q. That's fair. As of this memo, those 18 were the years core drilling had been done. 19 Have you reviewed the core logs for the core 20 drilling that was done during these six occasions? 21 A. Not all of them. I've spot-checked a 22 few of them. 23 Q. Which year? 24 A. Specifically I remember 1998. I don't 25 recall which of the other years I looked at.</p>	<p>1 I, PATRICK DOWNEY, do hereby certify that I 2 have read the foregoing transcript and that the 3 same and accompanying amendment sheets, if any, 4 constitute a true and complete record of my 5 testimony. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>_____ PATRICK DOWNEY</p> <p>() No Amendments () Amendments Attached Subscribed and sworn to before me this ____ day of _____, 2018.</p> <p>Notary Public: _____ Address: _____ My commission expires: _____ Seal:</p> <p>MLG</p>

65 (Pages 254 to 257)

Patrick Downey

Page 258

1 REPORTER'S CERTIFICATE
2 STATE OF COLORADO) ss.
3 COUNTY OF DENVER)

4 I, MELANIE L. GIAMARCO, do hereby certify
5 that I am a Registered Professional Reporter and
6 Notary Public within the State of Colorado; that
7 previous to the commencement of the examination,
8 the deponent was duly sworn by me.

9 I further certify that this deposition was
10 taken in machine shorthand by me at the time and
11 place herein set forth, that it was thereafter
12 reduced to typewritten form, and that the foregoing
13 constitutes a true and correct transcript of the
14 proceedings had.

15 I further certify that I am not employed by,
16 related to, nor of counsel for any of the parties
17 herein, nor otherwise interested in the result of
18 the within litigation.

19 In witness whereof, I have affixed my
20 signature this 21st day of August, 2018.

21
22 Melanie L. Giamarco
23 Registered Professional Reporter
24 Registered Merit Reporter
25 Certified Realtime Reporter

My commission expires: August 21, 2021
Notary ID: 20014025991